97th Congress }
2d Session }

COMMITTEE PRINT

A LEGISLATIVE HISTORY OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED IN 1976, 1977, 1978, 1979, AND 1980

TOGETHER WITH

A SECTION-BY-SECTION INDEX

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U.S. SENATE

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LETTER OF SUBMITTAL

December 4, 1981

Honorable Robert T. Stafford
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The former chairman of the former Subcommittee on Resource Protection, Senator Culver, requested that CRS prepare a comprehensive legislative history for the Endangered Species Act, as passed in 1973 and then amended in 1978. Subcommittee staff subsequently requested that CRS incorporate in the legislative history actions of the 96th Congress which further amended the Act. I am pleased to submit this document in response to these several requests.

The history covers the antecedent endangered species enactments of 1966 and 1969, as well as the Endangered Species Act of 1973 and the amendments to it of 1976, 1977, 1978, 1979, and 1980. Included are principal bills, legislative reports, House and Senate debate and actions as recorded in the Congressional Record, and Executive actions. Annotated bibliographies of hearings and a section-by-section index are also included.

This legislative history was prepared by Judy L. Sheppard, a Reference Assistant with CRS at the time the history was organized (and now a Professional Wildlife Biologist with the Rocky Mountain Region of the U.S. Forest Service, Lakewood, Colorado), and by William C. Jolly, Specialist in Natural Resources Policy, in our Environment and Natural Resources Policy Division. Ms. Sheppard is responsible for the greater portion, having organized and prepared nearly all the materials relating to the 1966 through the 1978 enactments. Mr. Jolly prepared the material covering the 1979 and 1980 amendments and coordinated final preparation of copy. Bibliographic assistance in preparation of the Selected References in Part IX was provided by Adrienne Grenfell in our Library Services Division.

We hope that this legislative history will serve the needs of your committee as well as those of other committees and Members of Congress as reauthorization of the Endangered Species Act of 1973, as amended, is considered by Congress next year.

Sincerely,

Gilbert Gude

Gilbert Gude
Director

Enclosure

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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, D.C. 20510

January 19, 1982

Letter of Transmittal

Dear Colleague:

The Endangered Species Act of 1973 (P.L. 93-205) is one of the most significant pieces of legislation enacted by the 93rd Congress, and indeed by all the Congresses in which I have been privileged to serve. The Act and the national policy which it enunciates have been internationally acclaimed for their vision and commitment to conservation and stewardship principles. As the nation has gained experience with the statute and with its implementation, Congress has made adjustments in its provisions.

The 1973 Act was a significant statute evolving out of simple statutes enacted in 1966 and 1969. It was subsequently amended in 1976, 1977, 1978, 1979 and 1980; most significantly in 1978 and 1979. In 1982, the authorization for appropriations under sections 6, 7, and 15 of the Endangered Species Act will expire. Accordingly, Congress will be considering the reauthorization of that appropriation authority during the second session of the 97th Congress.

In order to preserve the context in which the Act was developed, to aid interpretation of provisions finally adopted, and to assist the Congress in the reauthorization process, a detailed legislative history has been prepared by the Environmental Policy Division of the Congressional Research Service in the Library of Congress. Many of the original documents, such as committee reports, are either in limited supply or out of print. Yet, this material is widely sought after by lawyers and scholars and is essential to those who must implement the requirements of the Act. The publication of this legislative history will make all these necessary materials available in one comprehensive document, to Members of Congress, State and local officials, State attorneys general, State legislators, U.S. Attorneys, Federal officials, and the general public.

To assure the general availability of the important explanatory materials contained in this legislative history of P.L. 93-205, as amended, I have asked that it be published as a committee print for the use of the Committee on Environment and Public Works.

Sincerely yours,

Robert T. Stafford
Chairman

RTS/ssf

PREFACE

This legislative history was compiled by CRS at the direction of the Senate Committee on Environment and Public Works. It consists primarily of copy of original documents—bills, committee reports, and entries in the Congressional Record—reflecting views and judgments of their respective authors and not of the Congressional Research Service. Introductory material to each part of the compilation was prepared by CRS and sometimes includes language excerpted from Committee reports which may be judgmental or interpretive to some degree. Effort has been made to identify the source of such material for the benefit of the reader and to assure the objectivity of CRS has been maintained.

CONTENTS

PART I

LEGISLATIVE HISTORY OF THE ENDANGERED SPECIES ACT OF 1973

Page
Introduction 1
  Background 1
  Endangered Species Preservation Act of 1966; Public Law 89-669 8
  Endangered Species Conservation Act of 1969, Public Law 91-135 14
  Chronology—Public Law 93-205 23
Endangered Species Act of 1973, Public Law 93-205 24
  House action:
    H.R. 37 as introduced, January 3, 1973 45
    Mr. Dingell's extended remarks on H.R. 37, January 11, 1973 72
    H.R. 37 as reported by the Committee on Merchant Marine and Fisheries, July 27, 1973 74
    House Report 93-412 (to accompany H.R. 37), July 27, 1973 140
    House consideration and passage of H.R. 37, with amendments, September 18, 1973 180
    House consideration and passage of S. 1983, as amended, September 18, 1973 (in lieu of H.R. 37) 208
  Senate action:
    S. 1983 as introduced, June 12, 1973, and as reported, amended, by the Committee on Commerce, July 1, 1973 225
    S. Rept. 93-307 (to accompany S. 1983 as reported by the Committee on Commerce), July 1, 1973 298
    Senate consideration and passage of S. 1983, with amendments, July 24, 1973 342
  Conference committee and executive action:
    House Conference Report 93-740 (to accompany S. 1983 as reported by the Committee of Conference), December 19, 1973 426
    Senate agreement to conference report, December 19, 1973 455
    House agreement to conference report December 20, 1973 474
    S. 1983 presented to President for signature, December 21, 1973 486
    Presidential statement on signing S. 1983 into law December 28, 1973 486
  Annotated bibliography of hearings 487

PART II

LEGISLATIVE HISTORY OF 1976 AMENDMENTS TO THE ENDANGERED SPECIES ACT

Endangered Species Act appropriation authorization extension, Public Law 94-325:
  Background 489
  Chronology—Public Law 94-325 491
  Public Law 94-325 492
  House action:
    H.R. 8092 as introduced, June 20, 1975 493
    H. Rept. 94-887 (to accompany H.R. 8092 as reported with amendment by Committee on Merchant Marine and Fisheries), March 11, 1976 495
    House consideration and passage of H.R. 8092, amended, March 15, 1976 505
    House passage of S. 3122 in lieu of H.R. 8092 as previously passed, June 17, 1976 510

Endangered Species Act—Continued

Senate action:

Page
- Remarks of Senator Moss on introduction of S. 3122, March 10, 1976 512
- S. 3122 as introduced, March 10, 1976, and as reported with amendment, by Committee on Commerce, May 14, 1976 514
- S. Rept. 94-837 (to accompany S. 3122 as reported by the Committee on Commerce), May 13, 1976 516
- Senate consideration and passage of S. 3122, amended, May 18, 1976 523

Executive action:

- S. 3122, presented to the President, June 21, 1976 523

Annotated bibliography of hearings 523

Endangered Species Act amendments, Public Law 94-359:

- Background 525
- Chronology—Public Law 94-359 528
- Public Law 94-359 529

House action:

- H.R. 10229 as introduced, October 20, 1975 532
- H. Rept. 94-823 (to accompany H.R. 10229 as reported with amendments by the Committee on Merchant Marine and Fisheries), February 11, 1976 536
- House consideration and passage of H.R. 10229, amended, February 17, 1976 552
- House consideration and passage of S. 229, amended, in lieu of H.R. 10229, February 17, 1976 560
- House concurrence in Senate amendments to House amendments to S. 229, June 29, 1976 562

Senate action:

- S. 229, as introduced, January 17, 1975, and as reported, with amendments, by Committee on Commerce, April 4, 1975 565
- S. Rept. 94-63 (to accompany S. 229 as reported, with amendments, by the Committee on Commerce), April 4, 1975 572
- Senate consideration and passage of S. 229, amended, April 14, 1975 581
- Senate concurrence in House amendments to S. 229, with amendments, June 24, 1976 592

Executive action:

- S. 229, presented to the President, July 1, 1976 597
- S. 229, signed into law (Public Law 94-359), July 12, 1976 598

Annotated bibliography of hearings 598

PART III

LEGISLATIVE HISTORY OF 1977 AMENDMENTS TO THE ENDANGERED SPECIES ACT

Endangered Species Act, section 6, extension of appropriation authorization, Public Law 95-212:

- Background 601
- Chronology—Public Law 95-212 602
- Public Law 95-212 604

House action:

- H.R. 6405 as introduced, April 20, 1977, and as reported by the Committee on Merchant Marine and Fisheries, May 16, 1977 605
- H. Rept. 95-333 (to accompany H.R. 6405 as reported by Committee on Merchant Marine and Fisheries), May 16, 1977 607
- House consideration and passage of H.R. 6405, October 18, 1977 617
- House consideration and passage of S. 1316, amended, in lieu of H.R. 6405, October 18, 1977 621

Senate action:

- S. 1316, as introduced, April 20, 1977 622
- S. 1316, as reported, with amendment, by Committee on Environment and Public Works, May 16, 1977 623
- S. Rept. 95-186 (to accompany S. 1316 as reported with amendment by the Committee on Environment and Public Works), May 16, 1977 625
- Senate consideration and passage of S. 1316, amended, May 25, 1977 629

Endangered Species Act, section 6—Continued
- Conference committee and executive action:
  - S. Rept. 95-607 (to accompany S. 1316) as reported by the Committee of Conference, November 29, 1977 .... Page 630
  - Senate agreement to conference report, November 29, 1977 634
  - House agreement to conference report, November 30, 1977 634
  - S. 1316, presented to President, December 7, 1977 641
- Annotated bibliography of hearings 641

PART IV

LEGISLATIVE HISTORY OF 1978 AMENDMENTS TO THE ENDANGERED SPECIES ACT

Endangered Species Act Amendments of 1978, Public Law 95-632:
- Background 643
- Chronology—Public Law 95-632 646
- Public Law 95-632 647
- House action:
  - H.R. 14104 as introduced, September 18, 1978 664
  - H.R. 14104 as reported, with amendments, by the Committee on Merchant Marine and Fisheries, September 25, 1978 693
  - H. Rept. 95-1625 (to accompany H.R. 14104 as reported by the Committee on Merchant Marine and Fisheries), September 25, 1978 725
  - H. Rept. 95-1757 (to accompany H. Res. 1423) by the Committee on Rules providing for the consideration of H.R. 14104 794
  - House consideration and adoption of House Resolution 1423 providing for the consideration of H.R. 14104 795
  - House consideration and passage of H.R. 14104, with amendments, October 14, 1978 800
  - House consideration and passage of S. 2899, with amendment, in lieu of H.R. 14104, October 14, 1978 898
- Senate action:
  - S. 2899, as introduced, April 12, 1978 905
  - Statements of Mr. Culver, Mr. Baker, Mr. Randolph, Mr. Wallop on introduction of S. 2899 918
  - S. 2899, as reported, with amendments, by the Committee on Environment and Public Works, May 15, 1978 924
  - S. Rept. 95-874 (to accompany S. 2899 as reported by the Committee on Environment and Public Works), May 15, 1978 939
  - Senate consideration and passage of S. 2899, with amendments:
    - July 17, 1978 951
    - July 18, 1978 996
    - July 19, 1978 1073
  - S. 2899 as passed by the Senate, July 19, 1978 1169
- Conference committee and executive action:
  - H. Rept. 95-1804 (to accompany S. 2899 as reported by the Committee of Conference), October 15, 1978 1192
  - House agreed to conference report, October 14, 1978 1220
  - Senate agreed to conference report, October 14, 1978 1223
  - Presidential statement on signing S. 2899 into law, November 10, 1978 1230
- Annotated bibliography of hearings 1231

PART V

LEGISLATIVE HISTORY OF 1979 AMENDMENTS TO THE ENDANGERED SPECIES ACT

Tellico Dam rider to the Energy and Water Development Appropriations Act, 1980, Public Law 96-69:
- Background 1235
- Chronology—Tellico Dam Provision of Public Law 96-69 1235
- Public Law 96-69 1237
- House action:
  - Further consideration of the bill (H.R. 4388) begun 1238
  - Agreement to Duncan floor amendment on the Tellico Dam and Reservoir 1238
  - House passage of H.R. 4388, with amendments, June 18, 1979 1239

Tellico Dam rider to the Energy—Continued

Senate action: Page

- H.R. 4388, as introduced in the Senate, June 20, 1979 1243
- Consideration of H.R. 4388, with amendments, begun 1244
- Consideration and passage of floor amendment to strike Tellico Dam and Reservoir provision from the bill 1245
- Senate passage of H.R. 4388, with amendments; appointment of conferees 1255

Conference committee, post-conference congressional, and executive actions:

- House conference report 96-388 (to accompany H.R. 4388 as reported by the Committee of Conference), July 25, 1979 1260
- House commences consideration of conference report on H.R. 4388 (August 1, 1979 but appears in the proceedings of the House of that day as published in the Congressional Record of August 2, 1979) 1262
- Comments of Mr. Bevill concerning Tellico Dam and Reservoir 1262
- House consideration and adoption of motion that it insist on its disagreement to the amendment of the Senate No. 30 (concerning Tellico Dam and Reservoir and which the conference committee reported in disagreement) 1263
- Senate consideration and acceptance of the conference report exclusive of amendments in disagreement, including that concerning the Tellico Dam and Reservoir—September 10, 1979 1284
- Senate consideration and adoption of a motion to recede from its Amendment No. 30 (and accept the House language), September 10, 1979 1288
- H.R. 4388, presented to President, September 13, 1979 1300
- H.R. 4388, signed into law, September 25, 1979 (Public Law 96-69) 1301

Endangered Species Act of 1973, appropriation authorization, Public Law 96-159:

- Background 1302
- Chronology—Public Law 96-159 1303
- Public Law 96-159 1304

House action:

- H.R. 2218 as introduced, February 15, 1979 1311
- H.R. 2218 as reported by the Committee on Merchant Marine and Fisheries, May 15, 1979 1313
- House Report 96-167 (to accompany H.R. 2218), May 15, 1979 1317
- House Committee on Rules cleared H.R. 2218; referred to the House Calendar 1336
- Proposed amendment to H.R. 2218, submitted by Mr. Breaux 1336
- House consideration and approval of H. Res. 417, providing for consideration of H.R. 2218 1340
- Proposed amendment by Mr. Breaux to the amendment to H.R. 2218 offered by Mr. Breaux 1347
- House consideration of H.R. 2218, October 22, 1979 1348
- Statement of Mr. Young in support of his proposed amendment to H.R. 2218, October 24, 1979 1358
- House consideration and passage of H.R. 2218, October 24, 1979 1360
- House consideration and passage of S. 1143, amended, October 24, 1979 (in lieu of H.R. 2218) 1382

Senate action:

- S. 1143, an original bill, as reported by the Committee on Environment and Public Works, May 15, 1979 1387
- Senate Report 96-151 (to accompany S. 1143), May 15, 1979 1391
- Senate consideration and passage of S. 1143, June 13, 1979 1404

Conference committee and executive action:

- House Conference Report 96-697 (to accompany S. 1143 as reported by the Committee of Conference), December 11, 1979 1431
- House agreed to conference report on S. 1143, December 19, 1979 1450
- Senate agreed to conference report on S. 1143, December 19, 1979 1455
- Statement of the President on signing S. 1143 into law, December 28, 1979 (Public Law 96-159) 1457

Annotated bibliography of hearings 1457

PART VI

LEGISLATIVE HISTORY OF THE 1980 AMENDMENTS TO THE ENDANGERED SPECIES ACT

Endangered Species Act of 1973, appropriation authorization (section 6), Public Law 96-246:

Page
- Background 1461
- Chronology—Public Law 96-246 1462
- Public Law 96-246 1463
- House action:
  - H.R. 6839 as introduced, March 18, 1980 and as reported without amendment by the Committee on Merchant Marine and Fisheries, April 22, 1980 1464
  - H. Rept. 96-896 (to accompany H.R. 6839 as reported by the Committee on Merchant Marine and Fisheries), April 22, 1980 1465
  - House consideration and passage of H.R. 6839, without amendment, May 5, 1980 1474
- Senate action:
  - Senate consideration and passage of H.R. 6839, without amendment, May 12, 1980 1476
- Executive action:
  - H.R. 6839 signed into law, May 23, 1980 (Public Law 96-246) without statement 1477
- Annotated bibliography of hearings and a committee print 1477

PART VII

Unofficial codified version of the Endangered Species Act of 1973, as amended through December 31, 1980 1479

PART VIII

Section-by-section index 1493

PART IX

Selected references on the Endangered Species Act 1497

PART I

LEGISLATIVE HISTORY OF THE ENDANGERED SPECIES ACT OF 1973

INTRODUCTION

BACKGROUND

The following material is taken from a review of fisheries and wildlife conservation legislation of the 93d Congress written by CRS and issued by the Senate Committee on Interior and Insular Affairs as a Committee Print (*See* Congress and the Nation's Environment: Environmental and Natural Resources Affairs of the 93d Congress. April 1975. Committee Print. Senate Committee on Interior and Insular Affairs, Washington, U.S. Govt. Print. Off., pp. 561–566):

> Congress first comprehensively addressed the problem of endangered species with passage of the Endangered Species Preservation Act of October 15, 1966 (Public Law 89–669). This Act caused the Secretary of the Interior to initiate and carry out program efforts to conserve, restore, and in some cases propagate certain species of indigenous fish and wildlife he determined to be in danger of extinction. The Act also consolidated and even expanded authority for the Secretary of the Interior to manage and administer the national Wildlife Refuge System. The endangered species program was expanded by the Endangered Species Act of 1969 (Public Law 91–135) which authorized the Secretary of the Interior to develop a list of species or subspecies of animals threatened with worldwide extinction and prohibited the importation from any foreign country of any such animal or any part, any product, or egg thereof. Limited exceptions for scientific, educational, zoological or propagational purposes and for certain cases of commercial "economic hardship" were allowed under strict permitting procedures. The 1969 Act also amended existing laws to prohibit throughout the United States the sale or purchase by any person of any domestically endangered species or part or product thereof which was taken in any manner in violation of the laws or regulations of a State or foreign country. Finally, the 1969 Act authorized up to $15 million to be appropriated to acquire lands for the purpose of conserving, protecting, restoring, or propagating any endangered species.
>
> Experience of the Department of the Interior with these two endangered species acts indicated they did not provide the management tools needed to act early enough to save a

vanishing species. Hearing testimony indicated remedial, stronger legislation should provide the Secretary of the Interior with considerable discretion in listing and delisting animals so that he could afford immediate protection to those species both within present danger of extinction and likely within the foreseeable future to become so endangered. Such legislation should provide protection for animals which are endangered or threatened, should amend existing law to permit Land and Water Conservation Fund Act monies to be used for habitat acquisition for endangered species conservation, and should assure the Secretary authority to acquire lands for such purposes. Testimony taken at the hearings also argued that the many efficient state management programs for the benefit of endangered species ought to be protected and not undercut by Federal legislation. In short, the hearing record indicated concern for wisely relating Federal and State efforts, for broadening the concept of "endangered species" to include threatened species not yet actually endangered or populations of species which may be in danger in part of the species range but not necessarily over all of it, and for providing strengthened means of habitat acquisition in furtherance of endangered species conservation.

[Thus the 93d Congress again addressed the subject of endangered species protection and considered several bills with the following results:]

The Administration bill (H.R. 4758), Congressman Dingell's bill (H.R. 37), and Senator Williams' bill (S. 1983) were not greatly dissimilar in their approach or content. H.R. 37 as reported . . . combined elements of the Administration and Dingell bills. Some items of note include:

(1) The administration bill contained language somewhat ambiguous so far as Federal preemption of State laws was concerned. H.R. 37 as reported made it clear that the States were to be free to adopt legislation or regulations. The only exception to State powers to regulate more restrictively or to include species not on the Federal list is in cases where specific Federal permission had been granted for or ban issued on importation, exploitation, or interstate commerce.

(2) The Administration bill did not address itself to the problems of endangered or threatened plant species while H.R. 37 did. As reported, H.R. 37 provided authority for the acquisition of critical habitat of plants in the U.S., regulation of their importation and exportation, and foreign assistance programs consistent with the purposes and policies of the Act. The question of national regulation of endangered plants was assigned to the Smithsonian Institution to study and to recommend action to the Congress within one year of the Act's taking effect.

(3) The Administration bill recommended that the expired authority provided in the earlier endangered species Act of 1966 and 1969 for acquisition of habitat be renewed and ex-

panded to allow the Secretary of the Interior to use funds from the Land and Water Conservation Fund and to use authorities under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act, H.R. 37, as reported, accomplished that.

As reported, the Senate bill contained language defining the term "conservation and management" as these concepts relate to endangered species; the House bill did not. Some refinement of the definition was made in Conference, but a definition remained. The Senate bill also included an exception allowing an exclusion from the Act's protection in those cases (admittedly unlikely) where an endangered or threatened species of insect might pose an overwhelming and overriding risk to man. Thus the Secretary's hands would not be tied in this hypothetical exigency. The Senate bill also added a definition of "commercial activity" to delineate the types of activities which would qualify for special treatment under the Act. Included are trades and exchanges of animals or their products wherever they are undertaken for gain or profit.

The bill reported out of Conference assigned responsibility for the general management and regulation of marine species to the Secretary of Commerce; neither House nor Senate bills had addressed that jurisdictional problem. While both bills require the Secretary of the Interior to engage in consultation with all affected parties prior to determining the status of any given species, the Senate bill had required consultation with a special Advisory Committee created for that purpose; the House bill had no such body created. The Conference bill as reported deleted creation of such a body but required the Governor of each state within which the species under consideration is known to occur to be specially notified that a review of the species' status was underway and specifying such State was to have at least 90 days in which to respond.

The Senate bill had followed in part and differed in part from the otherwise controlling Administrative Procedures Act; the House bill did not address the subject thereby deferring to that Act. Enforcement agencies had expressed concern that the variations might complicate matters unduly so the conference bill as reported substituted language extending the period of public notice, providing for discretionary hearings, and establishing procedures for emergency, short-term action.

With respect to land acquisition, both House and Senate bills provided authority for endangered species conservation program managers to acquire habitat deemed critical to the survival of such endangered species, but the Senate bill restricted the authority to fish and wildlife habitat. The House bill extended the authority to acquire plant habitat, but restricted it to the Secretary of the Interior alone; the Conference bill included these House provisions.

So far as cooperation with the states is concerned, the House placed responsibility for establishing and overseeing an endangered species program in the Federal government in combination with development of cooperative agreements with concerned state agencies. The Senate opted for cooperative state and federal programs but gave the initial responsibility to the states. The Conference bill as reported compromised with a device to give the states fundamental roles with regard to resident species for a given period of time in hopes that strong state programs will be developed avoiding any Federal preemption. After this establishment period, the law would apply as in the House bill.

While both bills provided for a grant program to enable the states to develop systems for conserving endangered and threatened species, the Senate bill authorized a sum of $10 million over a 3½ year period and the House bill was open-ended; the Senate bill restricted unobligated grant authority to other grant programs under that section of the bill whereas the House bill authorized a larger share of assistance. The Senate version prevailed except in respect to the federal percentage of cost-sharing agreements.

Both bills authorized international endangered species programs but the Senate restricted them to countries in which counterpart funds were provided; the House stipulated that where such counterpart funds were available, they should be used in preference to appropriated funds. The House version prevailed. The House also allowed foreign assistance programs relating to plants but the Senate did not; the Senate version prevailed.

On the subject of species held in captivity or in a controlled environment as of the date of enactment, the Senate bill restricted prohibitions so as to exclude such animals; the House bill was silent thus making such prohibitions applicable. The Conference version of these bills provided alternative language positively defending certain of these noncommercial activities but placing the burden of proof on the person holding such goods or animals to show noncommercial purpose and action.

Application of and exceptions under the Act so far as Alaskan natives were concerned was a sensitive consideration. The Senate bill had extensive language providing exceptions for certain Alaskan native and nonnative residents to take threatened or endangered species for purposes of subsistence or native handicrafts; the House bill was silent on the subject. The Conference version provides for an Alaskan native exception which allows the State of Alaska to restrict native and non-native taking as a part of or separate from a state endangered species program. Natives, in this act, are considered to be as defined in the Alaska Native Land Claims Settlement Act.

Both bills provided for study of problems associated with endangered and threatened plant species, such as controls on interstate commerce. The House version prevailed, assigning the study directive to the Smithsonian Institution.

The Senate bill provided language specifying whenever a conflict between the Endangered Species Act and the Marine Mammal Protection Act might occur, the stricter of the two should prevail. The House accepted the Senate provision.

Finally, the Senate bill contained language prohibiting construction of a road through the Pioneer Weapons Hunting Area in the Daniel Boone National Forest. This provision was deleted in Conference on the grounds it was controversial enough to warrant separate hearings and Congressional consideration. There were other, relatively minor, differences between the Senate and House bills but these were largely of a technical, confronting or clarifying nature.

Thus, as enacted, Public Law 93–205 finds biological extinction is a continuing threat domestically and internationally and that it is the responsibility and intent of the Nation to conserve various species of fish and wildlife and plants both domestic and foreign, and that a key to meeting international and domestic responsibilities for fish and wildlife conservation is through financial assistance and other incentive programs which encourage States and other interested parties to develop and maintain conservation programs meeting national and international standards. The purpose of the Act is stated to be provision of "a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth" (in a subsection of the Act). The stated policy of the Congress is declared to be "that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."

To effect this policy in pursuit of the Act's purposes, the Act provides for the Secretaries of the Interior and Commerce to determine which species are endangered and which threatened according to any of a number of broadly worded causes and on the basis of the best scientific and commercial data, and after following specified procedures of consultation and notification of intent, to publish official lists of such species. The Act provides for the Secretaries of Commerce and of the Interior, as appropriate, to promulgate regulations designed for the conservation of such listed species. They may extend endangered and threatened species status to non-endangered or non-threatened species which resemble listed species if necessary to best assure adequate protection of the latter. Other provisions of the Act include establishment and implementation of a program by the Secretary of the Interior to conserve certain species of fish, wildlife and plants by utilizing land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, and the Migratory Bird Conservation Act, as appropriate, and by newly authorized authority to acquire lands, waters or interests therein, which authority is in addition to any other land acquisition authority the Secretary of the Interior possesses. Land and Water Conservation Fund Act of 1956 funds are made available for land acquisition as part of endangered species conservation programs. In carrying out the program authorized by the Act, the appropriate Secretary is charged to cooperate with the States to the maximum extent possible, including consultation, entry into management and administration agreements for certain areas, and entry into cooperative agreements to assist States in implementing their own "adequate and active" programs for the conservation of endangered and threatened species. The Secretary is authorized to provide financial assistance to any State with which it has entered into a cooperative agreement; the allocation of available funds is to be on the basis of specified factors or criteria; and the Federal share of program costs is to be no more than 66⅔ percent (or up to 75 percent if the joint Federal-state cooperative agreement involves two or more states).

The Endangered Species Act of 1973 also provides that in case of conflict between state laws and this law, the Federal law takes precedence unless the State law is more restrictive in provisions protecting endangered or threatened species. The Secretary is charged to review other programs under his administration and utilize them in furtherance of the purposes of the Act. All other Federal departments and agencies are to consult with the Secretary of Commerce or the Secretary of the Interior, as appropriate, and with the assistance of those Secretaries to use their authorities to carry out endangered and threatened species conservation programs, to see that actions authorized, funded or carried out by them do not have adverse effects on the survival of such species including destruction of habitat deemed critical to their survival as determined by the appropriate Secretary.

The President is authorized to use certain foreign currencies to assist any consenting foreign country in the development and management of programs in that country determined by the appropriate Secretary to be necessary or useful for the conservation of any listed species. He is also authorized, when necessary, to use appropriated funds as well as, or instead of, available foreign currencies. The Secretaries of the Interior and Commerce, certain foreign countries in the form of loaned personnel, conduct of personnel education and training programs, and conduct of law enforcement investigations and research abroad.

The Act also provides for assistance of various kinds in implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

There is a detailed section dealing with prohibited acts which apply to all individuals subject to U.S. jurisdiction. Listed species may not be taken, possessed, bought, sold, traded, imported, exported, delivered, carried, transported, received, etc. on penalty of fine or imprisonment or both. Similar prohibitions apply to violations of provisions of the Convention cited above.

Species held in captivity or in controlled environments for noncommercial purposes on the effective date of the Act are exempted from these prohibitions. Exemption is also provided for taking of listed species by Alaskan natives for subsistence purposes. A permit system is also established to regulate some taking and possession of endangered species for scientific purposes or to enhance propagation or survival of the affected species or for reasons of economic hardship as carefully prescribed.

Finally, civil and criminal penalties for violations are set forth, court jurisdiction is addressed, citizen suits in support of the purposes of this legislation are specifically authorized. The Smithsonian Institution is instructed to prepare a proposed list of endangered and threatened plants and to recommend methods of adequate protection of such species, including needed legislative action. Conforming amendments addressing other pertinent legislation are provided, portions of the earlier endangered species acts are repealed, appropriations are authorized, and a last section of the law provides that no provision of the Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

As signed into law, S. 1983 became Public Law 92-205. There follow the texts of the 1966 and 1969 Acts, and a chronology of enactment of the 1973 statute. Subsequently, the next section provides the documentary history of the 1973 Act.

Public Law 89-669
89th Congress, H. R. 9424
October 15, 1966

An Act

To provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes.

Fish and wildlife.
Conservation and protection.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress finds and declares that one of the unfortunate consequences of growth and development in the United States has been the extermination of some native species of fish and wildlife; that serious losses in other species of native wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; and that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, to conserve and protect, where practicable, the various species of native fish and wildlife, including game and nongame migratory birds, that are threatened with extinction. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species of native fish and wildlife, including migratory birds, that are threatened with extinction, and to consolidate, restate, and modify the present authorities relating to administration by the Secretary of the Interior of the National Wildlife Refuge System.

39 Stat. 1702;
50 Stat. 1311.
56 Stat. 1354.

(b) It is further declared to be the policy of Congress that the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense, together with the heads of bureaus, agencies, and services within their departments, shall seek to protect species of native fish and wildlife, including migratory birds, that are threatened with extinction, and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies, and services, shall preserve the habitats of such threatened species on lands under their jurisdiction.

Endangered species.

(c) A species of native fish and wildlife shall be regarded as threatened with extinction whenever the Secretary of the Interior finds, after consultation with the affected States, that its existence is endangered because its habitat is threatened with destruction, drastic modification, or severe curtailment, or because of overexploitation, disease, predation, or because of other factors, and that its survival requires assistance. In addition to consulting with the States, the Secretary shall, from time to time, seek the advice and recommendations of interested persons and organizations including, but not limited to, ornithologists, ichthyologists, ecologists, herpetologists, and mammalogists. He shall publish in the Federal Register the names of the species of native fish and wildlife found to be threatened with extinction in accordance with this paragraph.

Publication in Federal Register.

SEC. 2. (a) The Secretary of the Interior shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act to carry out a program in the United States of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction.

45 Stat. 1222;
70 Stat. 1119;
60 Stat. 1080.
16 USC 715, 742a note, 661 note.

(b) In addition to the land acquisition authorities in such Acts the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

16 USC 460l-4 note.

(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating selected species of native fish and wildlife, including migratory birds, that are threatened with extinction. Not to exceed $5,000,000 may be appropriated annually pursuant to that Act for such purpose for any fiscal year, and the total sum appropriated for such purpose shall not exceed $15,000,000: *Provided*, That the Secretary shall, to the greatest extent possible, utilize funds from the Land and Water Conservation Fund Act of 1965 for such purpose. Such sums shall remain available until expended. The Secretary shall not use more than $750,000 to acquire lands, waters, or interests therein for any one area for such purpose unless authorized by Act of Congress.

(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this Act. The Secretary shall also encourage other Federal agencies to utilize, where practicable, their authorities in furtherance of the purpose of this Act and shall consult with and assist such agencies in carrying out endangered species program.

Cooperation with States.

SEC. 3. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species of native fish and wildlife.

(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species of native fish and wildlife. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).

78 Stat. 701.
"National Wildlife Refuge System."

SEC. 4. (a) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "National Wildlife Refuge System" (referred to herein as the "System"), which shall be subject to the provisions of this section. Nothing contained in this Act shall restrict the authority of the Secretary to modify or revoke public land withdrawals affecting lands in the System as presently constituted, or as it may be constituted, whenever he determines that such action is consistent with the public interest.

Administration.

(b) In administering the System, the Secretary is authorized—

(1) to enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations when, and in such locations, and to the extent that the

Secretary determines will not be inconsistent with the primary purpose for which the affected area was established.

(2) to accept donations of funds and to use such funds to acquire or manage lands or interests therein, and

(3) to acquire lands or interests therein by exchange (a) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (b) for the right to remove, in accordance with such terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

Prohibited activities.

(c) No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law. Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife, including endangered species thereof, on lands not within the System. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System.

Use of areas.

(d) The Secretary is authorized, under such regulations as he may prescribe, to—

(1) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe; and

(2) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.

Penalties.

(e) Any person who violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder shall be fined not more than $500 or be imprisoned not more than six months, or both.

Enforcement. (f) Any person authorized by the Secretary of the Interior to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the court.

(g) Regulations applicable to areas of the System that are in effect on the date of enactment of this Act shall continue in effect until modified or rescinded.

(h) Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460K—460K-4) which authorizes the Secretary of the Interior to administer the areas within the System for public recreation. The provisions of this section relating to recreation shall be administered in accordance with the provisions of said Act.

(i) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

Definitions. Sec. 5. (a) The term "person" as used in this Act means any individual, partnership, corporation, or association.

(b) The terms "take" or "taking" or "taken" as used in this Act mean to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

(c) The terms "State" and the "United States" as used in this Act mean the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

Sec. 6. Section 4(b) of the Act of March 16, 1934 (48 Stat. 451), 72 Stat. 486. as amended (16 U.S.C. 718d(b)), is further amended by changing the colon after the word "areas" to a period and striking the provisos, which relate to hunting at certain wildlife refuges and which are now covered by section 4 of this Act.

Sec. 7. (a) Sections 4 and 12 of the Migratory Bird Conservation Act (45 Stat. 1222), as amended (16 U.S.C. 715c and 715k), are further amended by deleting the word "game" wherever it appears.

(b) Section 10 of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715i), which relates to the administration of certain wildlife refuges, is amended to read as follows:

"Sec. 10. (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada, and other species of wildlife found thereon, including species that are threatened with extinction, and to restore or develop adequate wildlife habitat.

"(b) In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies."

(c) Section 11 of the Migratory Bird Conservation Act (45 Stat. 1224) (16 U.S.C. 715j) is amended by striking the period at the end thereof and adding the following: "(39 Stat. 1702) and the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311)."

45 Stat. 1224.

(d) Sections 13 and 14 of the Migratory Bird Conservation Act (45 Stat. 1225), as amended (16 U.S.C. 715l and 715m), which provide for the enforcement of said Act and for penalties for violations thereof and which are covered by section 4 of this Act, are repealed.

Repeal.

Sec. 8. (a) Sections 302 and 303 of title III of the Act of June 15, 1935 (49 Stat. 382), as amended (16 U.S.C. 715d-1 and 715d-2), which authorize exchanges at wildlife refuges and which are covered by section 4 of this Act, are repealed.

Repeal.

(b) The last sentence of section 401(a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s), is amended by inserting after the term "wildlife refuges", the following: "lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction,".

78 Stat. 701.

Sec. 9. The first clause in section 1 of the Act of September 28, 1962 (76 Stat. 653), is amended by deleting the words "national wildlife refuges, game ranges," and inserting therein "areas within the National Wildlife Refuge System,".

16 USC 460k.

Sec. 10. (a) The first sentence in section 1 of the Act of August 22, 1957 (71 Stat. 412; 16 U.S.C. 696), is amended to read as follows:

Key deer and other wildlife, preservation.

"Sec. 1. In order to protect and preserve in the national interest the key deer and other wildlife resources in the Florida Keys, the Secretary of the Interior is authorized to acquire by purchase, lease, exchange, and donations, including the use of donated funds, such lands or interests therein in townships 65 and 66 south, ranges 28, 29, and 30 east, Monroe County, Florida, as he shall find to be suitable for the conservation and management of the said key deer and other wildlife: *Provided*, That no lands within a one thousand-foot zone adjacent to either side of United States Highway Numbered 1 in Monroe County shall be acquired for the Key Deer National Wildlife Refuge by condemnation. The Secretary, in the exercise of his exchange authority, may accept title to any non-Federal property in townships 65 and 66 south, ranges 28, 29, and 30 east, Monroe County, Florida, and in exchange therefor convey to the grantor of such property any federally owned property in the State of Florida under his jurisdiction which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require."

71 Stat. 413.

(b) Section 3 of such Act of August 22, 1957 (16 U.S.C. 696b), is amended by striking out the second and third sentences and inserting in lieu thereof the following: "The Secretary shall not utilize more than $2,035,000 from appropriated funds for the acquisition of land and interests in land for the purposes of this Act."

Approved October 15, 1966.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 1168 (Comm. on Merchant Marine & Fisheries) and No. 2205 (Comm. of Conference).

SENATE REPORT No. 1463 (Comm. on Commerce).

CONGRESSIONAL RECORD:

Vol. 111 (1965):	Oct. 18, considered and passed House.
Vol. 112 (1966):	Aug. 31, considered and passed Senate, amended.
	Oct. 7, Senate agreed to conference report.
	Oct. 13, House agreed to conference report.

Public Law 91-135
91st Congress, H. R. 11363
December 5, 1969

An Act

83 STAT. 275

To prevent the importation of endangered species of fish or wildlife into the United States; to prevent the interstate shipment of reptiles, amphibians, and other wildlife taken contrary to State law; and for other purposes.

Fish or wildlife.
Importation of endangered species, prevention.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of sections 2 through 5 of this Act, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, products, egg, or offspring thereof, or the dead body or parts thereof;

(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam; and

(4) "person" means any individual, firm, corporation, association, or partnership.

Sec. 2. Except as provided in section 3 of this Act, whoever imports from any foreign country into the United States any species or subspecies of fish or wildlife which the Secretary has determined, in accordance with the provisions of section 3 of this Act, to be threatened with worldwide extinction, shall be punished in accordance with the provisions of section 4 of this Act.

Species threatened with extinction.
Determination by Interior Secretary.

Sec. 3. (a) A species or subspecies of fish or wildlife shall be deemed to be threatened with worldwide extinction whenever the Secretary determines, based on the best scientific and commercial data available to him and after consultation, in cooperation with the Secretary of State, with the foreign country or countries in which such fish or wildlife are normally found and, to the extent practicable, with interested persons and organizations and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife is, in the judgment of the Secretary, endangered due to any of the following factors: (1) the destruction, drastic modification, or severe curtailment, or the threatened destruction, drastic modification, or severe curtailment, of its habitat, or (2) its overutilization for commercial or sporting purposes, or (3) the effect on it of disease or predation, or (4) other natural or man-made factors affecting its continued existence. After making such determination, the Secretary shall promulgate and from time to time he may revise, by regulation, a list in the Federal Register of such fish or wildlife by scientific, common, and commercial name or names, together with his determination. The Secretary shall at least once every five years conduct a thorough review of any such list to determine what, if any, changes have occurred relative to the continued existence of the species or subspecies of fish or wildlife then on the list and to determine whether such fish or wildlife continue to be threatened with worldwide extinction. Upon completion of such review, he shall take appropriate action consistent with the purposes of this Act. The Secretary shall, upon the request of any interested person, also conduct such review of any particular listed species or subspecies at any other time if he finds and publishes his finding that such person has presented substantial evidence to warrant such a review.

Publication in Federal Register.

Economic hardship.
Filing of application.

(b) In order to minimize undue economic hardship to any person importing any species or subspecies of fish or wildlife which are determined to be threatened with worldwide extinction under this section, under any contract entered into prior to the date of publication of such determination in the Federal Register of such species or subspecies, the

Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, shall permit such person to import such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.

Importation for educational or scientific purposes.

(c) The Secretary may permit, under such terms and conditions as he may prescribe, the importation of any species or subspecies of fish or wildlife listed in the Federal Register under this section for zoological, educational, and scientific purposes, and for the propagation of such fish or wildlife in captivity for preservation purposes, unless such importation is prohibited by any other Federal law or regulation.

(d) The provisions of section 553 of title 5 of the United States Code shall apply to any regulation issued under this section.

80 Stat. 383.

Violations, penalty provisions.

SEC. 4. (a)(1) Any person who violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder, or any regulation issued under subsection (d) of this section, other than a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

Hearing notice.

Search and seizure warrant.

(2) Any employee authorized pursuant to subsection (c) of this section to enforce the provisions of sections 2 and 3 of this Act, and any regulations or permits issued pursuant thereto or pursuant to subsection (d) of this section, shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any fish or wildlife or property or items taken, used, or possessed in connection with any violation of any such section, regulation, or permit with respect to which a civil penalty may be assessed pursuant to paragraph (1) of this subsection. Such fish, wildlife, property, or item so seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury pending disposition of proceedings by the Secretary involving the assessment of a civil penalty pursuant to paragraph (1) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit such person to post a bond or other surety satisfactory to the Secretary. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection for any nonwillful violation of any such section, regulation, or permit, such fish wildlife, property, or item so seized may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate. The owner or consignee of any such fish, wildlife, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. Whenever any fish or wildlife or property or item is seized pursuant to this subsection, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. If, with respect to any such fish, wildlife, property, or item so seized no action is commenced in any court of competent jurisdiction to obtain the

Posting of bond.

Notification of seizure.

forfeiture of such fish, wildlife, property, or item within thirty days following the disposition of proceedings involving the assessment of a civil penalty, such fish, wildlife, property, or item shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

Penalty.

(b) Any person who willfully violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder or any regulation issued under subsection (d) of this section shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

Enforcement provisions.

(c) The provisions of sections 2 and 3 of this Act and any regulations or permits issued pursuant thereto or pursuant to subsection (d) of this section shall be enforced by either the Secretary or the Secretary of the Treasury, or both such Secretaries. Either Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency or any State agency. Any employee of the Department of the Interior or the Department of the Treasury authorized by the Secretary or the Secretary of the Treasury may, without a warrant, arrest any person who such employee has probable cause to believe is willfully violating, in his presence or view, any such section, or any regulation or permit issued thereunder, the penalty for which is provided under subsection (b) of this section, and may execute a warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of such sections, regulations or permits. An employee who has made an arrest of a person in connection with any such willful violation may search such person at the time of his arrest and seize any fish or wildlife or property or items taken, used, or possessed in connection with any such violation, or any such employee shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any such fish, wildlife, property, or item so taken, used, or possessed. Any fish or wildlife or property or item seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury or by a United States marshal pending disposition of the case by the court, commissioner, or magistrate, except that the Secretary may, in lieu thereof, permit such person to post a bond or other surety satisfactory to him. Upon conviction, any (1) fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property or items seized may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. The owner or consignee of any such fish, wildlife, property, or item so seized, shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. If no conviction results from any such alleged violation, such fish, wildlife, property or item so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section.

Notification of seizure.

Return of property to owner.

U.S. ports of entry; designation by Secretary. Hearing notice.

(d) For the purposes of facilitating enforcement of sections 2 and 3 of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the importation of fish and wildlife, other than shellfish and fishery products imported for commercial purposes, into the United States. The importation of

Exceptions.

such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at nondesignated ports for movement to designated ports of entry. Such regulations may provide other exceptions to such prohibition if the Secretary deems it appropriate and consistent with the purposes of this subsection.

Regulations, issuance.

(e) In carrying out the provisions of sections 2 through 5 of this Act, the Secretary may issue such regulations as may be appropriate.

International agreements for fish and wildlife preservation.

SEC. 5. (a) In carrying out the provisions of sections 2 and 3 of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to species and subspecies of fish or wildlife threatened with worldwide extinction, to take measures to prevent any fish or wildlife from becoming threatened with extinction, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, and propagation of fish or wildlife. The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife and their habitat. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with worldwide extinction.

International conservation convention.

(b) To assure the worldwide conservation of endangered species and to prevent competitive harm to affected United States industries, the Secretary, through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to June 30, 1971, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.

Appropriation.

(c) There are authorized to be appropriated such sums, not to exceed $200,000, as may be necessary to carry out the provisions of subsection (b) of this section, such sums to remain available until expended.

Law administration, coordination.

26 Stat. 416;
32 Stat. 792;
76 Stat. 129;
46 Stat. 689.

SEC. 6. (a) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (21 U.S.C. 101 et seq., 21 U.S.C. 111, 21 U.S.C. 134 et seq.) and the Tariff Act of 1930, as amended (19 U.S.C. 1306).

(b) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

46 Stat. 741.

(c) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 527 of said Act (19 U.S.C. 1527) relating to the importation of wildlife taken, killed, possessed or exported to the United States in violation of the laws or regulations of a foreign country.

SEC. 7. (a) Section 43 of title 18, United States Code, is amended to read as follows: 62 Stat. 687; 74 Stat. 754.

"§ 43. Transportation of wildlife taken in violation of State, National, or foreign laws; receipt; making false records

"(a) Any person who—

"(1) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

"(2) delivers, carries, transports, or ships, by any means whatever, or causes to be delivered, carried, transported, or shipped for commercial or noncommercial purposes or sells or causes to be sold in interstate or foreign commerce any wildlife taken, transported, or sold in any manner in violation of any law or regulation of any State or foreign country; or

"(b) Any person who—

"(1) sells or causes to be sold any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any Act of Congress or regulation issued thereunder, or

"(2) sells or causes to be sold in interstate or foreign commerce any products manufactured, made, or processed from any wildlife taken, transported, or sold in any manner in violation of any law or regulation of a State or a foreign country, or

"(3) having purchased or received wildlife imported from any foreign country or shipped, transported, or carried in interstate commerce, makes or causes to be made any false record, account, label, or identification thereof, or

"(4) receives, acquires, or purchases for commercial or noncommercial purposes any wildlife—

"(A) taken, transported, or sold in violation of any law or regulation of any State or foreign country and delivered, carried, transported, or shipped by any means or method in interstate or foreign commerce, or

"(B) taken, transported, or sold in violation of any Act of Congress or regulation issued thereunder, or

"(5) imports from Mexico to any State, or exports from any State to Mexico, any game mammal, dead or alive, or part or product thereof, except under permit or other authorization of the Secretary or, in accordance with any regulations prescribed by him, having due regard to the requirements of the Migratory Birds and Game Mammals Treaty with Mexico and the laws of the United States forbidding importation of certain live mammals injurious to agriculture and horticulture; 50 Stat. 1311.

shall be subject to the penalties prescribed in subsections (c) and (d) of this section.

Penalty.

"(c)(1) Any person who knowingly violates, or who, in the exercise of due care, should know that he is violating, any provision of subsection (a) or (b) of this section may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United

Hearing notice.

States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

Search and seizure warrant.

Posting of bond.

Notification of seizure.

"(2) Any employee authorized by the Secretary to enforce the provisions of this section, or any officer of the customs, shall have authority to execute any warrant to search for and seize any wildlife, product, property, or item used or possessed in violation of this section with respect to which a civil penalty may be assessed pursuant to paragraph (1) of this subsection. Such wildlife, product, property, or item so seized shall be held by such employee pending disposition of proceedings by the Secretary involving the assessment of a civil penalty pursuant to paragraph (1) of this subsection; except that the Secretary may, in lieu of holding such wildlife, product, property, or item, permit such person to post a bond or other surety satisfactory to the Secretary. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection for any nonwillful violation of this section, such wildlife, product, property, or item so seized may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate. The owner or consignee of any such wildlife, product, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. Whenever any wildlife, product, property, or item is seized pursuant to this subsection, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. If, with respect to any such wildlife, product, property, or item so seized, no action is commenced in any court of competent jurisdiction to obtain the forfeiture of such wildlife, product, property, or item within thirty days following the disposition of proceedings involving the assessment of a civil penalty, such wildlife, product, property, or item shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

Penalty.

"(d) Any person who knowingly and willfully violates any provision of subsection (a) or (b) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than one year, or both.

"(e) Any wildlife or products thereof seized in connection with any knowing and willful violation of this section with respect to which a penalty may be imposed pursuant to subsection (d) shall, upon conviction of such violation, be forfeited to the Secretary to be disposed of by him in such manner as he deems appropriate. Any other property or item so seized may upon conviction, in the discretion of the court, be forfeited to the United States or otherwise disposed of. The owner or consignee of any such wildlife, product, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. If no conviction results from any such alleged violation, such wildlife, product, property or item so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (c) of this section.

Definitions.

"(f) For the purpose of this section, the term—

"(1) 'Secretary' means the Secretary of the Interior;

"(2) 'person' means any individual, firm, corporation, association, or partnership;

"(3) 'wildlife' means any wild mammal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, egg, or offspring thereof, or the dead body or parts thereof, but does not include migratory birds for which protection is afforded under the Migratory Bird Treaty Act, as amended;

40 Stat. 755.
16 USC 710.

"(4) 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam; and

"(5) 'taken' means captured, killed, collected, or otherwise possessed."

62 Stat. 817.

(b) Section 3054 of title 18 of the United States Code is amended to read as follows:

"§ 3054. Officers' powers involving animals and birds

63 Stat. 89.
Ante, p. 279.
62 Stat. 687.

"Any employee authorized by the Secretary of the Interior to enforce sections 42, 43, and 44 of this title, and any officer of the customs, may arrest any person who violates section 42 or 44, or who such employee or officer of the customs has probable cause to believe is knowingly and willfully violating section 43, in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of said sections.".

62 Stat. 820.

(c) Section 3112 of title 18 of the United States Code is amended to read as follows:

"§ 3112. Search warrants for seizure of animals, birds, or eggs

"Any employee authorized by the Secretary of the Interior to enforce sections 42, 43, and 44 of this title, and any officer of the customs, shall have authority to execute any warrant to search for and seize any wildlife, product, property, or item used or possessed in connection with a violation of section 42 or 44, or in connection with a knowing and willful violation of section 43, and any such wildlife, product, property, or item so seized shall be held by him or by the United States marshal pending disposition thereof by the court.".

Marking and labeling provisions.

SEC. 8. (a) The first paragraph in section 44 of title 18, United States Code, is amended by deleting "wild animals or birds, or the dead bodies or parts thereof," and inserting "any wild mammal, wild bird, amphibian, or reptile, or any mollusk or crustacean, or the dead body or parts or eggs thereof."

(b) Section 44 of title 18, United States Code, is amended by adding at the end thereof a new paragraph to read as follows:

"In any case where the marking, labeling, or tagging of a package under this section indicating in any way the contents thereof would create a significant possibility of theft of the package or its contents, the Secretary of the Interior may, upon request of the owner thereof or his agent or by regulation, provide some other reasonable means of notifying appropriate authorities of the contents of such packages."

Black Bass Act, amendments.
61 Stat. 517.

SEC. 9. (a) Section 2 of the Black Bass Act (44 Stat. 576), as amended (16 U.S.C. 852), is amended to read as follows:

"SEC. 2. It shall be unlawful for any person—

"(1) to deliver or receive for transportation, or to transport, by any means whatsoever, in interstate or foreign commerce, any black bass and other fish, if such person knows or in the exercise of due care should know that (A) such delivery or transportation is contrary to the law of the State or any foreign country from which such black bass or other fish is found or transported, or is contrary to other applicable law, or (B) such black bass or other fish has been either caught, killed, taken, sold, purchased, possessed, or transported, at any time, contrary to the law of the State or foreign country, in which it was caught, killed, taken, sold, purchased, or possessed, or from which it was transported, or contrary to other applicable law;

"(2) to purchase or receive any such black bass or other fish, if such person knows, or in the exercise of due care should know, that such bass or fish has been transported in violation of the provisions of this Act;

"(3) receiving any shipment of black bass or other fish transported in interstate or foreign commerce to make any false record or render a false account of the contents of such shipment, if such person knows, or in the exercise of due care should know, that such record or account is false. For the purposes of this section, the provisions of section 10 of title 18, United States Code, shall apply to the term 'interstate or foreign commerce'."

62 Stat. 686.

(b) Section 3 of the Black Bass Act (46 Stat. 846), as amended (16 U.S.C. 852a), is amended by deleting the comma after "commerce" and inserting therein "or foreign commerce,".

61 Stat. 517.

(c) Section 6(a) of the Black Bass Act (46 Stat. 846), as amended (16 U.S.C. 852d(a)), is amended by adding a new sentence at the end thereof to read as follows: "The provisions of this section and any regulations issued thereunder shall be enforced by personnel of the Secretary of the Interior, and he may utilize by agreement, with or without reimbursement, personnel, services, and facilities of other Federal agencies."

(d) The first section of the Black Bass Act (46 Stat. 846), as amended (16 U.S.C. 851), is amended by inserting immediately before the period at the end thereof a comma and the following: "and the term 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam".

Repeal.
40 Stat. 755;
49 Stat. 1556.

SEC. 10. The second paragraph of section 4 of the Migratory Bird Treaty Act, as amended (16 U.S.C. 705), is hereby repealed.

Effective date.

SEC. 11. The provisions of sections 1 through 10 of this Act shall be effective one hundred and eighty days after the date of enactment of this Act.

SEC. 12. (a) Section 1 of the Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa), is amended by adding new subsection at the end thereof to read as follows:

"Fish and wildlife."

"(d) For the purpose of sections 1 through 3 of this Act, the term 'fish and wildlife' means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean."

(b) The last sentence of section 2(c) of the Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668bb(c)), is amended by changing the "$750,000" to "$2,500,000".

(c) Section 2(d) of the Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668bb(d)), is amended by adding a new sentence at the end thereof to read as follows: "The Secretary is authorized to acquire by purchase, donation, exchange, or otherwise any privately owned land, water, or interests therein within the boundaries of any area administered by him, for the purpose of conserving, protecting, restoring, or propagating any selected species of native fish and wildlife that are threatened with extinction and each such acquisition shall be administered in accordance with the provisions of law applicable to such area, and there is authorized to be appropriated annually for fiscal years 1970, 1971, and 1972 not to exceed $1,000,000 to carry out the provisions of this sentence."

Appropriation.

(d) The provisions of sections 1 through 5 of this Act and sections 1 through 3 of the Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa–668cc), as amended by this section, shall hereinafter be cited as the "Endangered Species Conservation Act of 1969".

Citation of act.

(e) The second sentence of section 1(a) of the Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa(a)), is amended by changing the comma after the word "extinction" to a period and deleting the remainder of the sentence.

(f) The provisions of sections 4 and 5 of the Act of October 15, 1966 (80 Stat. 929; 16 U.S.C. 668dd–668ee), as amended, shall hereinafter be cited as the "National Wildlife Refuge System Administration Act of 1966".

Citation of act.

Approved December 5, 1969.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 91-382 (Comm. on Merchant Marine & Fisheries).
SENATE REPORT No. 91-526 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 115 (1969):
    July 21: Considered and passed House.
    Nov. 10: Considered and passed Senate, amended.
    Nov. 20: House concurred in Senate amendments.

CHRONOLOGY—PUBLIC LAW 93-205

October 15, 1966—H.R. 9424 signed into law (Public Law 89-669).

December 5, 1969—H.R. 11363 signed into law (Public Law 91-135).

January 3, 1973—H.R. 37 introduced, referred to House Committee on Merchant Marine and Fisheries.

June 12, 1973—S. 1983 introduced, referred to Senate Committee on Commerce.

July 1, 1973—S. 1983 reported to Senate, amended, S. Rept. 93-307.

July 24, 1973—S. 1983 passed Senate, amended.

July 27, 1973—H.R. 37 reported to House, amended, H. Rept. 93-412.

September 18, 1973—S. 1983 passed House, amended, in lieu of H.R. 37.

December 19, 1973—Senate agreed to Conference Report (H. Conf. Rept. 93-740).

December 20, 1973—House agreed to Conference Report (H. Conf. Rept. 93-740).

December 28, 1973—Signed into law (Public Law 93-205).

Public Law 93-205
93rd Congress, S. 1983
December 28, 1973

An Act

87 STAT. 884

To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

Endangered Species Act of 1973.

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species.
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endángered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.
Sec. 17. Marine Mammal Protection Act of 1972.

FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere; 56 Stat. 1354.

(D) the International Convention for the Northwest Atlantic Fisheries; 1 UST 477.

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean; 4 UST 380.

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the

Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.

(2) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(3) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(4) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(5) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(6) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(7) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any

place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(9) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(10) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

84 Stat. 2090.
5 USC app.

(11) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

(12) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(13) The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

(14) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(15) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(16) The term "United States", when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species,

he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(b) BASIS FOR DETERMINATIONS.—(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

Notice, publication in Federal Register.

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

Publication in Federal Register.

(c) LISTS.—(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

Review.
80 Stat. 383.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

80 Stat. 926;
83 Stat. 275, 283.
16 USC 668aa note.

(3) Any list in effect on the day before the date of the enactment of this Act of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this Act, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this Act. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5, United States Code.

Post, p. 893.

(d) PROTECTIVE REGULATIONS.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(a) of this Act only to the extent that such regulations have also been adopted by such State.

(e) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f) REGULATIONS.—(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(2)(A) In the case of any regulation proposed by the Secretary to carry out the purposes of this Act—

Notice, publication in Federal Register.

(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

Hearing request.

Publication in Federal Register.

(ii) if any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the Federal Register.

80 Stat. 383.

(B) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

80 Stat. 926;
83 Stat. 275, 283.
16 USC 668aa note.

(i) Any regulation appropriate to carry out the purposes of this Act which was originally promulgated to carry out the Endangered Species Conservation Act of 1969.

(ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b)(A), (B), and (C) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

Statement by the Secretary.

(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a statement by the Secretary of the facts on which such regulation is based and the relationship of such facts to such regulation.

LAND ACQUISITION

Sec. 5. (a) Program.—The Secretary of the Interior shall establish and implement a program to conserve (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 4 of this Act; or (B) plants which are concluded in Appendices to the Convention. To carry out such program, he—

70 Stat. 1119.
16 USC 742a note.
60 Stat. 1080;
72 Stat. 563.
16 USC 661 note.

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

45 Stat. 1222.
16 USC 460l-4 note.

(b) Acquisitions.—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

Sec. 6. (a) General.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) Management Agreements.—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

78 Stat. 701.

(c) COOPERATIVE AGREEMENTS.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(1) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(2) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(4) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species; and

(5) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) Review of State Programs.—Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Conflicts Between Federal and State Laws.—Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

"Establishment period."

(g) Transition.—(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension. 80 Stat. 383.

(h) Regulations.—The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) Appropriations.—For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,000,000.

INTERAGENCY COOPERATION

Sec. 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded. or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

INTERNATIONAL COOPERATION

Sec. 8. (a) Financial Assistance.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance

66 Stat. 662.

68 Stat. 454.
7 USC 1691.

under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) Encouragement of Foreign Programs.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and their habitat.

(c) Personnel.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) Investigations.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) Convention Implementation.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. 56 Stat. 1354.

PROHIBITED ACTS

Sec. 9. (a) General.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(C) sell or offer for sale in interstate or foreign commerce any such species; or

(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b) Species Held in Captivity or Controlled Environment.—The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from the effective date of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on such effective date.

(c) Violation of Convention.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) Imports and Exports.—(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

Recordkeeping

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) Reports.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) Designation of Ports.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

83 Stat. 277.
16 USC 668cc-4.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 668cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

SEC. 10. (a) PERMITS.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

16 USC 668cc-3.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

"Undue economic hardship."

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

Publication in Federal Register.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

Definitions.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

86 Stat. 1033.
16 USC 1373.

PENALTIES AND ENFORCEMENT

SEC. 11. (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F), (a)(2) (A), (B), or (C), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

Notice; hearing.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

80 Stat. 384.

(b) Criminal Violations.—(1) Any person who willfully commits an act which violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F); (a) (2) (A), (B), or (C), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who willfully commits an act which violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any

regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

65 Stat. 725; 72 Stat. 348.

(c) District Court Jurisdiction.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) Rewards.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(e) Enforcement.—(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

Federal and State agencies, utilization.

Warrants.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

Package inspection.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

Search and seizure, authority.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State.

Jurisdiction.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

Intervention.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

Litigation costs.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

Injunctive relief.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

46 Stat. 689.
19 USC 1654.

(h) COORDINATION WITH OTHER LAWS.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

46 Stat. 741.

ENDANGERED PLANTS

SEC. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

Report to Congress.

87 STAT. 901
87 STAT. 902

CONFORMING AMENDMENTS

SEC. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

Ante, p. 886.

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,".

80 Stat. 929.
80 Stat. 930.

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l—9(a)(1)) is amended by striking out:

78 Stat. 897;
86 Stat. 459.

> "THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."

and inserting in lieu thereof the following:

> "ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k-1), is amended to read as follows:

Conservation areas.
86 Stat. 1063.

"The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

87 STAT. 902

87 STAT. 903

86 Stat. 1027.

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

16 USC 1362.
Ante, p. 884.

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

16 USC 1402.

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

86 Stat. 973.
7 USC 136 note.

(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91–135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

80 Stat. 926.
83 Stat. 275.

SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa–668cc-6), is repealed.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed $4,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 and not to exceed $10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed $2,000,000 for fiscal year 1974, $1,500,000 for fiscal year 1975 and not to exceed $2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

EFFECTIVE DATE

SEC. 16. This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

86 Stat. 1027.
16 USC 1361 note.

Approved December 28, 1973.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-412 (Comm. on Merchant Marine and Fisheries) and No. 93-740 (Comm. of Conference).
SENATE REPORT No. 93-307 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 119 (1973):
July 24, considered and passed Senate.
Sept. 18, considered and passed House, amended, in lieu of H. R. 37.
Dec. 19, Senate agreed to conference report.
Dec. 20, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENT, Vol. 10, No. 1 (1974):
Dec. 28, 1973, Presidential statement.

93d CONGRESS
1st Session

H. R. 37

IN THE HOUSE OF REPRESENTATIVES

January 3, 1973

Mr. Dingell (for himself, Mr. Clark, Mr. Mailliard, Mr. Mosher, Mr. Downing, Mr. Ruppe, Mr. Goodling, Mr. Bray, Mr. Stubblefield, Mr. Murphy of New York, Mr. Jones of North Carolina, Mr. Biaggi, Mr. Anderson of California, Mr. Kyros, Mr. McCloskey, Mr. Steele, Mr. du Pont, Mr. Tiernan, Mr. James V. Stanton, Mr. Metcalfe, Mr. Nedzi, Mr. O'Hara, Mr. William D. Ford, Mrs. Griffiths, and Mr. Moss) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Conservation Act of 1973".

FINDINGS, PURPOSES, AND POLICY

Sec. 2. (a) The Congress finds and declares that one

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of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish and wildlife; that serious losses in species of wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico, the Migratory and Endangered Bird Treaty with Japan, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the International Convention for the Northwest Atlantic Fisheries, the International Convention for the High Seas Fisheries of the North Pacific Ocean, and other international agreements, to conserve and protect, where practicable, the various species of fish and wildlife that are threatened with extinction; and that the conservation, protection, restoration, or propagation of such species will inure to the benefit of all citizens.

(b) The purposes of this Act are to provide a program for the conservation, protection, restoration, or propagation of species and subspecies of fish and wildlife that are threatened with extinction, or are likely within the foreseeable future to become threatened with extinction.

(c) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to protect species or subspecies of fish and wildlife that are threatened with extinction or are likely within the foreseeable future to become threatened with extinction, and, wherever practicable, shall utilize their authorities in furtherance of the purpose of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Federal lands" means all lands or interests therein over which Congress has legislative authority under article IV, section 3, clause 2 of the United States Constitution, including, without limitation, lands enumerated in section 1400 of title 43, United States Code.

(2) The term "fish" means any fish or any part, products egg, or offspring thereof, or the dead body or parts thereof.

(3) The term "import" means to bring into the territorial limits of the United States and includes, without limitation, entry into a foreign trade zone, and transshipment through any portion of the United States without customs entry.

(4) The term "person" means (A) any private person or entity, and (B) any officer, employee, agent,

department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(5) The term "Secretary" means the Secretary of the Interior and the Secretary of Commerce with respect to functions and responsibilities under this Act relating to fish and wildlife, consistent with such program responsibilities therefor as are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970.

(6) The term "take" means (A) with respect to fish or wildlife, to threaten, harass, hunt, capture, or kill, or attempt to threaten, harass, hunt, capture, or kill; and (B) with respect to flora, to collect, sever, remove, or otherwise damage in any manner, or to attempt to collect, sever, remove, or otherwise damage in any manner.

(7) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands.

(8) The term "wildlife" means any wild mammal, game or nongame migratory bird, wild bird, amphibian, reptile, mollusk, crustacean, or other animal, or any part,

products, egg, or offspring thereof, or the dead body or parts thereof, including migratory, nonmigratory and endangered birds for which protection is also afforded by treaty or other international agreement.

DETERMINATION OF ENDANGERED SPECIES

SEC. 4. (a) A species or subspecies of fish or wildlife shall be regarded as an endangered species whenever the Secretary by regulation determines, based on the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, and, in cooperation with the Secretary of State, the country or countries in which such fish and wildlife are normally found or whose citizens harvest the same on the high seas, and with interested persons and organizations, and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife throughout all or a significant portion of its habitat or range, is either presently threatened with extinction or will likely within the foreseeable future become threatened with extinction, due to any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) The Secretary shall publish in the Federal Register not less than annually a list, by scientific and common name or names, species or subspecies determined, pursuant to this section, to be endangered, indicating as to each species or subspecies so listed whether such species or subspecies is threatened with extinction or is likely within the foreseeable future to become threatened with extinction and, in either case, over what portion of the range of such species or subspecies this condition exists. The Secretary may, from time to time, by regulation revise any such list. The endangered species lists which are effective as of the date of the enactment of this Act shall be republished to conform to the provisions of this Act, except that until such republication nothing herein shall be deemed to invalidate such endangered species lists. The provisions of section 553 of title 5, United States Code, shall apply to any regulation issued under this subsection. The Secretary shall, upon the petition of an interested person under subsection 553 (e) of title 5, United States Code, also conduct a review, on the record after opportunity for agency hearing, of any listed or unlisted species or subspecies of fish or wildlife proposed to be removed from or added to the list, but only if he finds and publishes his finding that such person has presented substantial evidence to warrant such a review.

LAND ACQUISITION AND AGENCY COMPLIANCE

SEC. 5. (a) The Secretary shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as appropriate, to carry out a program in the United States of conserving, protecting, restoring, or propagating those species and subspecies of fish and wildlife that he lists as endangered species pursuant to section 4 of this Act.

(b) In addition to the land acquisition authorities otherwise available to him, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purposes of this Act relating to the conservation, protection, restoration, or propagation of those species or subspecies of fish and wildlife that he lists as endangered species pursuant to section 4 of this Act.

(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 as amended may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, or propagating those species or subspecies of fish and wildlife, that he lists as endangered species pursuant to section 4 of this Act.

(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize, wherever practicable, their authorities in furtherance of the purposes of this Act by carrying out programs for the protection of endangered species and by taking such actions as may be necessary to insure that actions authorized, funded, regulated, or administered by them do not jeopardize the continued existence of endangered species or result in destruction or modification of critical habitat of such species.

(e) Subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), the President is authorized, as a demonstration of the commitment of the United States to the worldwide protection of endangered species of fish and wildlife, to use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any species or subspecies of fish and wildlife listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate.

(f) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to endangered species or subspecies of fish or wildlife, to take measures to prevent any fish or wildlife from becoming endangered, and he shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the conservation and propagation of fish and wildlife. The Secretary is authorized to assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote conservation of fish or wildlife, including (1) educational training of United States and foreign personnel, here or abroad, in the subjects of fish and wildlife management, research, and law enforcement; and (2) rendering professional assistance abroad in such matters. The Secretary is also authorized to conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the obligations imposed upon him by this Act.

COOPERATION WITH THE STATES

SEC. 6. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species.

(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, or propagation of endangered species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).

(c) The Secretary may delegate to a State the authority to regulate the taking by any person of endangered species or subspecies of resident fish and wildlife when he determines that such State maintains an adequate and active program.

consistent with the policies and purposes of this Act, to manage and protect such endangered species in accordance with criteria issued by the Secretary.

(d) Any action taken by the Secretary under this section shall be subject to his periodic and continual review at no greater than annual intervals. Such review shall include the consideration of comment received from interested persons.

(e) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting the power of any State to enact legislation more restrictive than the provisions of this Act for the protection and conservation of fish and wildlife, including the regulation or prohibition of the retail sale of specimens or of products processed or manufactured from the specimens of fish and wildlife, whether such specimens are alive or dead.

(f) The Secretary of the Interior shall promptly undertake an investigation and study regarding the functions and responsibilities which the States should have with respect to the management and protection of endangered species of fish and wildlife. The Secretary of the Interior shall report the results of the investigation and study to Congress within one year after the date of the enactment of this Act, and such report may include such recommendations as he may have regarding the extent to, and manner in, which the Federal

Government should assist the States in establishing and implementing management and protection programs for endangered species.

PROHIBITED ACTS

SEC. 7. (a) Notwithstanding any other Act of Congress or regulation issued pursuant thereto, and except as otherwise provided in section 8 of this Act, any person who—

(A) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or

(B) takes or causes to be taken within the United States, the territorial sea of the United States, Federal lands, or upon the high seas; or

(C) ships, carries, or receives by any means in interstate commerce

any species or subspecies of fish or wildlife which the Secretary has listed as an endangered species threatened with extinction pursuant to section 4 of this Act shall be punished in accordance with the provisions of section 9 of this Act.

(b) Whenever the Secretary, pursuant to section 4 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction, he shall issue such regulations as he deems necessary or advisable to provide for the conservation, protection, restoration, or propagation of such species or subspecies, including regulations subjecting to punishment in accordance with section 9 of this Act any person who—

(1) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or

(2) takes or causes to be taken within the United States, the territorial sea of the United States, Federal lands, or upon the high seas; or

(3) ships, carries, or receives by any means in interstate commerce

any such species or subspecies of fish or wildlife likely within the foreseeable future to become threatened with extinction.

(c) For the purpose of facilitating enforcement of this Act, the Secretary may from time to time, by regulation, extend the protection of this section, to the extent he deems it advisable, to any species or subspecies of fish or wildlife which is not listed as an endangered species, but which so closely resembles in appearance, at the point in question, a species or subspecies of fish or wildlife which has been listed as endangered, that substantial difficulty is posed to enforcement personnel in attempting to differentiate between the endangered and nonendangered species or subspecies of fish or wildlife, and this difficulty poses an additional threat to the endangered species or subspecies.

EXCEPTIONS

SEC. 8. (a) The Secretary may permit, under such terms and conditions as he may prescribe, the importation, taking, or the transportation in interstate commerce of any species or subspecies of fish or wildlife listed as an endangered species threatened with extinction for scientific purposes, and for the propagation of such fish and wildlife in captivity for preservation purposes, but only if he finds that such importation, exportation, taking, transportation in interstate commerce, or projected use will not adversely affect the regenerative capacity of such specimen or of such species or subspecies in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species.

(b) In order to minimize undue economic hardship to any person importing, exporting, taking, or transporting in interstate commerce any species or subspecies of fish or wildlife which is listed as an endangered species pursuant to section 4 of this Act under any contract entered into prior to the date of original publication of such listing in the Federal Register, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship may permit such person to import, export, take or transport such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.

PENALTIES AND ENFORCEMENT

SEC. 9. (a) (1) Any person who violates any provision of this Act or of any regulation or permit issued thereunder, other than a person who commits a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In the case of Guam such actions may be brought in the district court of Guam; in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands, and in the case of American

Samoa such actions may be brought in the District Court of the United States for the District of Hawaii and such courts shall have jurisdiction of such actions. In hearing such action, the court shall sustain the Secretary's action if such action is supported by substantial evidence.

(2) Whenever any property is seized pursuant to subsection (c) of this section, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. Upon the assessment and collection of a civil penalty pursuant to paragraph (1) of this subsection, any property so seized may be proceeded against in any court of competent jurisdiction and forfeited. Fish or wildlife so forfeited shall be conveyed to the Secretary for disposition by him in such a manner as he deems appropriate. If, with respect to any such property so seized, no compromise forfeiture has been achieved or no action is commenced to obtain the forfeiture of such fish, wildlife, property, or item within thirty days following the completion of proceedings involving an assessment and collection of a civil penalty, such property shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

(3) Proceedings for the assessment of civil penalties pursuant to paragraph (1) of this subsection shall be com-

ducted in accordance with section 554 of title 5. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Any person who knowingly violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both, and any Federal hunting or fishing licenses, permits, or stamps may be revoked or withheld for a period of up to five years. Upon conviction, (1) any fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property seized pursuant to subsection (e) of this section may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. If no conviction results from any such alleged violation, such property so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section.

(e) (1) The provisions of sections 7 and 8 of this Act and any regulations or permits issued pursuant thereto, or pursuant to subsection (d) or (e) of this section, shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency.

(2) Any authorized agent of the Department of the Interior, the Department of Commerce, or the Department of the Treasury may, with or without a warrant, arrest any person who such agent has probable cause to believe is knowingly violating this Act, in his presence or view, or any regulation or permit issued thereunder, the penalty for which

is provided under subsection (b) of this section. An agent who has made an arrest of a person in connection with any such violation may search such person at the time of his arrest and seize any property taken, used, or possessed in connection with any such violation.

(3) Any authorized agent of the Department of the Interior, the Department of Commerce, or the Department of the Treasury shall have authority to search and seize with or without a warrant, as provided by the customs laws and by the law relating to search and seizure. Any such officer or agent is authorized to execute warrants to search for and seize any property, including, for the purposes of this section, any fish, wildlife, aircraft, boat, or other conveyance, weapon, business records, shipping documents, or other items which have been taken, used, or possessed in connection with the violation of any section, regulation, or permit with respect to which a civil or criminal penalty may be assessed, pursuant to subsection (a) or (b) of this section. Any property seized pursuant to this section shall be held by any agent authorized by the Secretary or the Secretary of the Treasury, or by a United States marshal, pending disposition of proceedings under subsection (a) or (b) of this section; except that either Secretary may, in lieu of holding such property, either (1) permit a bond or other satisfactory surety to be posted, or (2) place the fish or wildlife in the custody of

such person as he shall designate. Upon the imposition of a civil or criminal penalty, or a forfeiture, the costs to the Government of transfer, board, and handling, including the cost of investigations at a nondesignated port of entry, shall be payable to the account of the Secretary. The owner or consignee of any property so seized shall, as soon as practicable following such seizure, be notified of the fact in accordance with regulations established by the Secretary.

(d) The Secretary may request the Attorney General to bring appropriate action to prevent threatened violations of this Act, or of any regulations or orders promulgated pursuant thereto.

(e) For the purposes of facilitating the enforcement of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the imporation of fish and wildlife (other than shellfish and fishery products) into the United States. The importation of such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at nondesignated ports in the interest of the health or safety of the fish or wildlife. Such regulations may provide other exceptions to such prohibition if the Secretary, in his discretion, deems it appropriate and consistent with the purposes of this subsection.

(f) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the purposes of this Act, and the Secretaries of the Treasury and the department in which the Coast Guard is operating are authorized to promulgate such regulations as may be appropriate to the exercise of responsibilities under subsection (e) (1) of this section.

(g) (1) Any person who engages to any extent in business as an importer of fish and wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation of fish and wildlife made by him and the subsequent disposition made by him with respect to such fish and wildlife; and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business an opportunity to examine his inventory of imported fish and wildlife and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records.

(3) The Secretary of the Treasury shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

INTERNATIONAL AND INTERGOVERNMENTAL COOPERATION

SEC. 10. (a) (1) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to endangered species or subspecies of fish and wildlife, to take measures to prevent any fish or wildlife from becoming endangered, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, or propagation of fish and wildlife. The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife and their habitat or range. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with extinction.

(2) To assure the worldwide conservation of endangered species and to avoid unnecessary harm to affected United States industries, the Secretary, through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to July 1, 1973, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.

(b) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (19 U.S.C. 1306; 21 U.S.C. 101–105, 111–135b, and 612–614). Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

(c) Whenever the Secretary determines, pursuant to this Act or any other authority vested in him, that a species or subspecies of fish or wildlife is endangered, the Secretary of Agriculture may use all authorities available to him with respect to research, investigations, conservation, development, protection, management, and enhancement of fish and wildlife, including, but not limited to, the conservation operations program, watershed protection and flood prevention programs, rural environmental assistance program, Great Plains conservation program, resource conservation and development program, forestry programs, and water bank program, in the protection, control, management, or enhancement of such species or subspecies. Recognizing the national and international interest in the protection and enhancement of such species or subspecies, the Secretary of Agriculture is authorized, notwithstanding the provisions of any other law, to bear the full cost, or any lesser amount that he, in consultation with the Secretary, may determine desirable to accomplish the objectives of the Act, of the cost of installing any practice, measure, work of improvement, facility, or other developmental, protective, or management systems on private land, the primary purpose of which is for the purpose of enabling the landowner to comply with the regulations, or other recommendations, of the Secretary pertaining to the protection, control, management, or enhancement of such species or subspecies. The Secretary of Agriculture, in carrying out the purposes of this section, shall utilize his authorities to conduct research and investigations into vegetative and structural methods and other methods and practices, measures, works of improvement, and facilities most appropriate or effective in the protection, control, management, or enhancement of such species or subspecies. If determined desirable, the Secretary and the Secretary of Agriculture shall be authorized to jointly carry out research, surveys, and investigations. The Secretary is authorized to transfer to the Secretary of Agriculture such funds as may be necessary to carry out the purposes of this subsection.

(d) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 527 of such Act (19 U.S.C. 1527) relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED FLORA

SEC. 11. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species and subspecies of endangered plants, trees, and other flora, and (2) methods of providing adequate protection to such species and subspecies, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review. For the purposes of this section, there is authorized to be appropriated $250,000.

CONFORMING AMENDMENTS

SEC. 12. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd (c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species listed by the Secretary pursuant to section 4 of the Endangered Species Conservation Act of 1972, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715i (a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".

(c) Subsection 401 (a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction" in the last sentence thereof.

(d) Section 6 (a) (1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l—9 (a) (1)) is amended by striking out:

> "THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."

and inserting in lieu thereof the following:

> "ENDANGERED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 (c) of the Endangered Species Conservation Act of 1972, needed for the purpose of conserving, protecting, restoring, or propagating endangered species of fish and wildlife."

REPEALS

SEC. 13. (a) Sections 1 through 3 of the Act of October 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C. 668aa–668cc), are hereby repealed in their entirety.

(b) Sections 1 through 6 of the Act of December 5, 1969 (83 Stat. 275–279; 16 U.S.C. 668cc–1 through 668cc–6) are hereby repealed in their entirety.

[From the Congressional Record, Jan. 11, 1973]

A BILL TO STRENGTHEN THE ENDANGERED SPECIES ACT

Mr. DINGELL. Mr. Speaker, I introduced a bill on January 3 in the 93d Congress to strengthen the Endangered Species Act of 1966 and 1969.

Before discussing this legislation, I want to report that I am pleased the U.S. State Department has scheduled an international conference, as called for in the 1969 act, on fish and wildlife resources threatened with extinction. This coincides with the movement in the House of Representatives to enact the stronger Endangered Species Act of 1973.

Mr. Speaker, I have been pressing the State Department for this international conference upon many occasions and while it has been postponed by the State Department several previous times, I certainly hope this will be a successful gathering of nations this year.

I am also requesting that I be appointed as a delegate from the House to the conference to be held February 12 through March 2, 1973, in Washington, D.C. This conference will seek to establish a worldwide treaty regarding the cooperative protection of endangered species among countries.

Mr. Speaker, over 70 members of the House are cosponsoring H.R. 37, the Endangered Species Act of 1973, and related bills which have been referred to the Merchant Marine and Fisheries Committee. As chairman of the Subcommittee on Fisheries and Wildlife Conservation, I will urge early hearings to be held prior to full committee action.

This is one of the most important pieces of legislation in the new Congress and I am satisfied it will enable us to thoroughly strengthen the existing acts. Further action on the existing law is necessary if we are to conserve, protect, and propagate our threatened fish and wildlife resources which I feel are diminishing too rapidly.

Major provisions of the new bill provide for the administration of the endangered species program jointly by the Departments of Interior and Commerce, removes the distinction now existing between native and worldwide endangered species and extends present controls to reach species or subspecies not only threatened with extinction, but also those which are likely to be threatened within the near future.

The measure extends existing prohibitions to include export as well as import of listed endangered species and provides for civil and criminal penalties for violations of the act.

In some other specific points, the bill would provide additional protection to such species as the eastern timber wolf, found in Minnesota; and the Texas red wolf, found in Texas and Louisiana areas; along with the the wolverine, found in Minnesota and Idaho.

It would enable better consideration to be given to the kangaroo, found in Australia, and to the Asiatic elephant. These two species, along with the wolverine, are being heavily exploited and are in trouble, but are not yet on the brink of extinction, according to the Department of the Interior.

Protective help also would be given to the eastern cougar which is found on the eastern seaboard and which ranges from Maryland to the Carolinas and Georgia.

The Department of the Interior would have the authority to control exports of native endangered species just as it now controls the imports of foreign endangered species. This allows us to do as much for our own animals as we are doing for foreign endangered species.

Other sections of the endangered species bill would require an annual review of the endangered species list, allow States to adopt their own programs, authorize a study of State and Federal roles, restrict importation for zoos and educational purposes, and establish a separate restriction section for other importers.

Mr. Speaker, a list of the cosponsors of the Endangered Species Conservation Act of 1973 follows:

List of Cosponsors

Frank M. Clark, William S. Mailliard, Charles A. Mosher, Thomas N. Downing, Philip E. Ruppe, George A. Goodling, William G. Bray, Frank A. Stubblefield, John M. Murphy, Walter B. Jones.

Mario Biaggi, Glenn M. Anderson, Peter N. Kyros, Paul N. McCloskey, Jr., Robert H. Steele, Pierre S. du Pont, Robert O. Tiernan, James V. Stanton, Ralph H. Metcalfe, Lucien N. Nedzi.

James G. O'Hara, William D. Ford, Martha W. Griffiths, John E. Moss, James R. Grover, Robert L. Leggett, Edwin B. Forsythe, Ben B. Blackburn, Joseph P. Vigorito, Charles E. Bennett;

Jerome R. Waldie, Morris K. Udall, John Ware, Louis C. Wyman, Ken Hechler, David Obey, Gus Yatron, Clarence D. Long, Frank Annunzio, Edward I. Koch, Don Edwards, Fred B. Rooney;

Donald M. Fraser, James C. Corman, Charles J. Carney, John J. Rhodes, Jerry L. Pettis, Peter W. Rodino, Jr., Hamilton Fish, Jr., Joseph P. Addabbo, Bill Alexander, Robert H. Mollohan;

Romano L. Mazzoli, Norman F. Lent, William L. Hungate, Thaddeus J. Dulski, Joseph E. Karth, Silvio O. Conte, Mark Andrews, Bertram L. Podell, Marvin L. Esch, Henry Helstoski;

Richardson Preyer, Thomas L. Ashley, Jonathan B. Bingham, James C. Cleveland, Edward R. Boybal, Bill Frenzel, Robert H. Michel, Bella S. Abzug, Edward G. Biester, Jr., John F. Seiberling.

Union Calendar No. 194

93D CONGRESS
1ST SESSION

H. R. 37

[Report No. 93–412]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. DINGELL (for himself, Mr. CLARK, Mr. MAILLIARD, Mr. MOSHER, Mr. DOWNING, Mr. RUPPE, Mr. GOODLING, Mr. BRAY, Mr. STUBBLEFIELD, Mr. MURPHY of New York, Mr. JONES of North Carolina, Mr. BIAGGI, Mr. ANDERSON of California, Mr. KYROS, Mr. MCCLOSKEY, Mr. STEELE, Mr. DU PONT, Mr. TIERNAN, Mr. JAMES V. STANTON, Mr. METCALFE, Mr. NEDZI, Mr. O'HARA, Mr. WILLIAM D. FORD, Mrs. GRIFFITHS, and Mr. MOSS) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

JULY 27, 1973

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Endangered Species Conservation Act of 1973".~~

~~FINDINGS, PURPOSES, AND POLICY~~

~~SEC. 2. (a) The Congress finds and declares that one~~

~~of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish and wildlife; that serious losses in species of wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico, the Migratory and Endangered Bird Treaty with Japan, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the International Convention for the Northwest Atlantic Fisheries, the International Convention for the High Seas Fisheries of the North Pacific Ocean, and other international agreements, to conserve and protect, where practicable, the various species of fish and wildlife that are threatened with extinction; and that the conservation, protection, restoration, or propagation of such species will inure to the benefit of all citizens.~~

~~(b) The purposes of this Act are to provide a program for the conservation, protection, restoration, or propagation of species and subspecies of fish and wildlife that are threatened with extinction, or are likely within the foreseeable future to become threatened with extinction.~~

~~(c) It is further declared to be the policy of Congress~~

~~that all Federal departments and agencies shall seek to protect species or subspecies of fish and wildlife that are threatened with extinction or are likely within the foreseeable future to become threatened with extinction, and, wherever practicable, shall utilize their authorities in furtherance of the purpose of this Act.~~

~~DEFINITIONS~~

~~SEC. 3. For the purposes of this Act—~~

~~(1) The term "Federal lands" means all lands or interests therein over which Congress has legislative authority under article IV, section 3, clause 2 of the United States Constitution, including, without limitation, lands enumerated in section 1400 of title 43, United States Code.~~

~~(2) The term "fish" means any fish or any part, products, egg, or offspring thereof, or the dead body or parts thereof.~~

~~(3) The term "import" means to bring into the territorial limits of the United States and includes, without limitation, entry into a foreign trade zone, and transshipment through any portion of the United States without customs entry.~~

~~(4) The term "person" means (A) any private person or entity, and (B) any officer, employee, agent,~~

~~department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.~~

~~(5) The term “Secretary” means the Secretary of the Interior and the Secretary of Commerce with respect to functions and responsibilities under this Act relating to fish and wildlife, consistent with such program responsibilities therefor as are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970.~~

~~(6) The term “take” means (A) with respect to fish or wildlife, to threaten, harass, hunt, capture, or kill, or attempt to threaten, harass, hunt, capture, or kill; and (B) with respect to flora, to collect, sever, remove, or otherwise damage in any manner, or to attempt to collect, sever, remove, or otherwise damage in any manner.~~

~~(7) The term “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands.~~

~~(8) The term “wildlife” means any wild mammal, game or nongame migratory bird, wild bird, amphibian, reptile, mollusk, crustacean, or other animal, or any part,~~

~~products, egg, or offspring thereof, or the dead body or parts thereof, including migratory, nonmigratory and endangered birds for which protection is also afforded by treaty or other international agreement.~~

~~DETERMINATION OF ENDANGERED SPECIES~~

~~SEC. 4. (a) A species or subspecies of fish or wildlife shall be regarded as an endangered species whenever the Secretary by regulation determines, based on the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, and, in cooperation with the Secretary of State, the country or countries in which such fish and wildlife are normally found or whose citizens harvest the same on the high seas, and with interested persons and organizations, and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife throughout all or a significant portion of its habitat or range, is either presently threatened with extinction or will likely within the foreseeable future become threatened with extinction, due to any of the following factors:~~

~~(1) the present or threatened destruction, modification, or curtailment of its habitat or range;~~

~~(2) overutilization for commercial, sporting, scientific, or educational purposes;~~

~~species or subspecies of fish or wildlife proposed to be removed from or added to the list, but only if he finds and publishes his finding that such person has presented substantial evidence to warrant such a review.~~

~~LAND ACQUISITION AND AGENCY COMPLIANCE~~

~~SEC. 5. (a) The Secretary shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as appropriate, to carry out a program in the United States of conserving, protecting, restoring, or propagating those species and subspecies of fish and wildlife that he lists as endangered species pursuant to section 4 of this Act.~~

~~(b) In addition to the land acquisition authorities otherwise available to him, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purposes of this Act relating to the conservation, protection, restoration, or propagation of those species or subspecies of fish and wildlife that he lists as endangered species pursuant to section 4 of this Act.~~

~~(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 as amended may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for~~

~~the purpose of conserving, protecting, restoring, or propagating those species or subspecies of fish and wildlife, that he lists as endangered species pursuant to section 4 of this Act.~~

~~(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize, wherever practicable, their authorities in furtherance of the purposes of this Act by carrying out programs for the protection of endangered species and by taking such actions as may be necessary to insure that actions authorized, funded, regulated, or administered by them do not jeopardize the continued existence of endangered species or result in destruction or modification of critical habitat of such species.~~

~~(e) Subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), the President is authorized, as a demonstration of the commitment of the United States to the worldwide protection of endangered species of fish and wildlife, to use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and man-~~

~~agement of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any species or subspecies of fish and wildlife listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate.~~

~~(f) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to endangered species or subspecies of fish or wildlife, to take measures to prevent any fish or wildlife from becoming endangered, and he shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the conservation and propagation of fish and wildlife. The Secretary is authorized to assign or otherwise make available any officer or employee of his department for~~ the purpose of cooperating ~~with foreign countries and international organizations in developing personnel resources and programs which promote conservation of fish or wildlife, including (1) educational training of United States and foreign personnel, here or abroad, in the subjects of fish and wildlife management, research, and law enforcement; and (2) rendering~~

~~professional assistance abroad in such matters. The Secretary is also authorized to conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the obligations imposed upon him by this Act.~~

~~COOPERATION WITH THE STATES~~

~~SEC. 6. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species.~~

~~(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, or propagation of endangered species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).~~

~~(c) The Secretary may delegate to a State the authority to regulate the taking by any person of endangered species or subspecies of resident fish and wildlife when he determines that such State maintains an adequate and active program,~~

~~consistent with the policies and purposes of this Act, to manage and protect such endangered species in accordance with criteria issued by the Secretary.~~

~~(d) Any action taken by the Secretary under this section shall be subject to his periodic and continual review at no greater than annual intervals. Such review shall include the consideration of comment received from interested persons.~~

~~(e) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting the power of any State to enact legislation more restrictive than the provisions of this Act for the protection and conservation of fish and wildlife, including the regulation or prohibition of the retail sale of specimens or of products processed or manufactured from the specimens of fish and wildlife, whether such specimens are alive or dead.~~

~~(f) The Secretary of the Interior shall promptly undertake an investigation and study regarding the functions and responsibilities which the States should have with respect to the management and protection of endangered species of fish and wildlife. The Secretary of the Interior shall report the results of the investigation and study to Congress within one year after the date of the enactment of this Act, and such report may include such recommendations as he may have regarding the extent to, and manner in, which the Federal~~

~~“Government should assist the States in establishing and implementing management and protection programs for endangered species.~~

~~PROHIBITED ACTS~~

~~Sec. 7. (a) Notwithstanding any other Act of Congress or regulation issued pursuant thereto, and except as otherwise provided in section 8 of this Act, any person who—~~

~~(A) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or~~

~~(B) takes or causes to be taken within the United States, the territorial sea of the United States, Federal lands, or upon the high seas; or~~

~~(C) ships, carries, or receives by any means in interstate commerce~~

~~any species or subspecies of fish or wildlife which the Secretary has listed as an endangered species threatened with extinction pursuant to section 4 of this Act shall be punished in accordance with the provisions of section 9 of this Act~~

~~(b) Whenever the Secretary, pursuant to section 4 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction, he shall issue such regulations as he deems necessary or advisable to provide for the conservation, protection, restoration, or propagation of such~~

~~species or subspecies, including regulations subjecting to punishment in accordance with section 9 of this Act any person who—~~

~~(1) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or~~

~~(2) takes or causes to be taken within the United States, the territorial sea of the United States, Federal lands, or upon the high seas; or~~

~~(3) ships, carries, or receives by any means in interstate commerce~~

~~any such species or subspecies of fish or wildlife likely within the foreseeable future to become threatened with extinction.~~

~~(c) For the purpose of facilitating enforcement of this Act, the Secretary may from time to time, by regulation, extend the protection of this section, to the extent he deems it advisable, to any species or subspecies of fish or wildlife which is not listed as an endangered species, but which so closely resembles in appearance, at the point in question, a species or subspecies of fish or wildlife which has been listed as endangered, that substantial difficulty is posed to enforcement personnel in attempting to differentiate between the endangered and nonendangered species or subspecies of~~

~~fish or wildlife, and this difficulty poses an additional threat to the endangered species or subspecies.~~

~~EXCEPTIONS~~

~~SEC. 8. (a) The Secretary may permit, under such terms and conditions as he may prescribe, the importation, taking, or the transportation in interstate commerce of any species or subspecies of fish or wildlife listed as an endangered species threatened with extinction for scientific purposes, and for the propagation of such fish and wildlife in captivity for preservation purposes, but only if he finds that such importation, exportation, taking, transportation in interstate commerce, or projected use will not adversely affect the regenerative capacity of such specimen or of such species or subspecies in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species.~~

~~(b) In order to minimize undue economic hardship to any person importing, exporting, taking, or transporting in interstate commerce any species or subspecies of fish or wildlife which is listed as an endangered species pursuant to section 4 of this Act under any contract entered into prior to the date of original publication of such listing in the Federal Register, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such~~

~~hardship, may permit such person to import, export, take or transport such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.~~

~~PENALTIES AND ENFORCEMENT~~

~~SEC. 9. (a) (1) Any person who violates any provision of this Act or of any regulation or permit issued thereunder, other than a person who commits a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In the case of Guam such actions may be brought in the district court of Guam; in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands, and in the case of American~~

~~Samoa such actions may be brought in the District Court of the United States for the District of Hawaii and such courts shall have jurisdiction of such actions. In hearing such action, the court shall sustain the Secretary's action if such action is supported by substantial evidence.~~

~~(2) Whenever any property is seized pursuant to subsection (e) of this section, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. Upon the assessment and collection of a civil penalty pursuant to paragraph (1) of this subsection, any property so seized may be proceeded against in any court of competent jurisdiction and forfeited. Fish or wildlife so forfeited shall be conveyed to the Secretary for disposition by him in such a manner as he deems appropriate. If, with respect to any such property so seized, no compromise forfeiture has been achieved or no action is commenced to obtain the forfeiture of such fish, wildlife, property, or item within thirty days following the completion of proceedings involving an assessment and collection of a civil penalty, such property shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.~~

~~(3) Proceedings for the assessment of civil penalties pursuant to paragraph (1) of this subsection shall be con-~~

~~ducted in accordance with section 554 of title 5. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.~~

~~(b) Any person who knowingly violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both, and any Federal hunting or fishing licenses, permits, or stamps may be revoked or withheld for a period of up to five years. Upon conviction, (1) any fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property seized~~

~~pursuant to subsection (e) of this section may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. If no conviction results from any such alleged violation, such property so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section~~.

~~(c) (1) The provisions of sections 7 and 8 of this Act and any regulations or permits issued pursuant thereto, or pursuant to subsection (d) or (e) of this section, shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency~~.

~~(2) Any authorized agent of the Department of the Interior, the Department of Commerce, or the Department of the Treasury may, with or without a warrant, arrest any person who such agent has probable cause to believe is knowingly violating this Act, in his presence or view, or any regulation or permit issued thereunder, the penalty for which~~

~~is provided under subsection (b) of this section. An agent who has made an arrest of a person in connection with any such violation may search such person at the time of his arrest and seize any property taken, used, or possessed in connection with any such violation.~~

~~(3) Any authorized agent of the Department of the Interior, the Department of Commerce, or the Department of the Treasury shall have authority to search and seize with or without a warrant, as provided by the customs laws and by the law relating to search and seizure. Any such officer or agent is authorized to execute warrants to search for and seize any property, including, for the purposes of this section, any fish, wildlife, aircraft, boat, or other conveyance, weapon, business records, shipping documents, or other items which have been taken, used, or possessed in connection with the violation of any section, regulation, or permit with respect to which a civil or criminal penalty may be assessed, pursuant to subsection (a) or (b) of this section. Any property seized pursuant to this section shall be held by any agent authorized by the Secretary or the Secretary of the Treasury, or by a United States marshal, pending disposition of proceedings under subsection (a) or (b) of this section; except that either Secretary may, in lieu of holding such property, either (1) permit a bond or other satisfactory surety to be posted, or (2) place the fish or wildlife in the custody of~~

~~such person as he shall designate. Upon the imposition of a civil or criminal penalty, or a forfeiture, the costs to the Government of transfer, board, and handling, including the cost of investigations at a nondesignated port of entry, shall be payable to the account of the Secretary. The owner or consignee of any property so seized shall, as soon as practicable following such seizure, be notified of the fact in accordance with regulations established by the Secretary~~.

~~(d) The Secretary may request the Attorney General to bring appropriate action to prevent threatened violations of this Act, or of any regulations or orders promulgated pursuant thereto.~~

~~(e) For the purposes of facilitating the enforcement of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the imporation of fish and wildlife (other than shellfish and fishery products) into the United States. The importation of such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at nondesignated ports in the interest of the health or~~

~~safety of the fish or wildlife. Such regulations may provide other exceptions to such prohibition if the Secretary, in his discretion, deems it appropriate and consistent with the purposes of this subsection.~~

~~(f) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the purposes of this Act, and the Secretaries of the Treasury and the department in which the Coast Guard is operating are authorized to promulgate such regulations as may be appropriate to the exercise of responsibilities under subsection (e) (1) of this section.~~

~~(g) (1) Any person who engages to any extent in business as an importer of fish and wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.~~

~~(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—~~

~~(A) keep such records as will fully and correctly disclose each importation of fish and wildlife made by him and the subsequent disposition made by him with respect to such fish and wildlife; and~~

~~(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such~~

~~representative access to his places of business an opportunity to examine his inventory of imported fish and wildlife and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records.~~

~~(3) The Secretary of the Treasury shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.~~

~~INTERNATIONAL AND INTERGOVERNMENTAL COOPERATION~~

~~SEC. 10. (a) (1) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to endangered species or subspecies of fish and wildlife, to take measures to prevent any fish or wildlife from becoming endangered, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, or propagation of fish and wildlife. The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices~~

~~designed to enhance such fish or wildlife and their habitat or range. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with extinction.~~

~~(2) To assure the worldwide conservation of endangered species and to avoid unnecessary harm to affected United States industries, the Secretary, through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to July 1, 1973, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.~~

~~(b) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (19 U.S.C. 1306; 21 U.S.C. 101-105, 111-135b, and 612-614)~~. ~~Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be~~

~~considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.~~

~~(e) Whenever the Secretary determines, pursuant to this Act or any other authority vested in him, that a species or subspecies of fish or wildlife is endangered, the Secretary of Agriculture may use all authorities available to him with respect to research, investigations, conservation, development, protection, management, and enhancement of fish and wildlife, including, but not limited to, the conservation operations program, watershed protection and flood prevention programs, rural environmental assistance program, Great Plains conservation program, resource conservation and development program, forestry programs, and water bank program, in the protection, control, management, or enhancement of such species or subspecies. Recognizing the national and international interest in the protection and enhancement of such species or subspecies, the Secretary of Agriculture is authorized, notwithstanding the provisions of any other law, to bear the full cost, or any lesser amount that he, in consultation with the Secretary, may determine desirable to accomplish the objectives of the Act, of the cost of installing any practice, measure, work of improvement, facility, or other developmental, protective, or management systems on private land, the primary purpose of which is~~

~~for the purpose of enabling the landowner to comply with the regulations, or other recommendations, of the Secretary pertaining to the protection, control, management, or enhancement of such species or subspecies. The Secretary of Agriculture, in carrying out the purposes of this section, shall utilize his authorities to conduct research and investigations into vegetative and structural methods and other methods and practices, measures, works of improvement, and facilities most appropriate or effective in the protection, control, management, or enhancement of such species or subspecies. If determined desirable, the Secretary and the Secretary of Agriculture shall be authorized to jointly carry out research, surveys, and investigations. The Secretary is authorized to transfer to the Secretary of Agriculture such funds as may be necessary to carry out the purposes of this subsection~~.

~~(d) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 527 of such Act (16 U.S.C. 1527) relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country~~.

~~ENDANGERED FLORA~~

~~SEC. 11. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species and subspecies of endangered plants, trees, and other flora, and (2) methods of providing adequate protection to such species and subspecies, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review. For the purposes of this section, there is authorized to be appropriated $250,000.~~

~~CONFORMING AMENDMENTS~~

~~SEC. 12. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd (c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species listed by the Secretary pursuant to section 4 of the Endangered Species Conservation Act of 1972, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."~~

~~(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715i (a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".~~

~~(c) Subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction" in the last sentence thereof.~~

~~(d) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9(a)(1)) is amended by striking out:~~

> ~~"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."~~

~~and inserting in lieu thereof the following:~~

> ~~"ENDANGERED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(c) of the Endangered Species Conservation Act of 1972, needed for the purpose of conserving, protecting, restoring, or propagating endangered species of fish and wildlife."~~

~~REPEALS~~

~~SEC. 13. (a) Sections 1 through 3 of the Act of October 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C. 668aa–668cc), are hereby repealed in their entirety.~~

~~(b) Sections 1 through 6 of the Act of December 5, 1969 (83 Stat. 275–279; 16 U.S.C. 668cc–1 through 668c–6) are hereby repealed in their entirety.~~

That this Act, with the following table of contents, may be cited as the "Endangered and Threatened Species Conservation Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species.
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endangered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.

FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) The Congress finds and declares that one of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish, wildlife, and plants; that serious losses in species of wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico, the Migratory and Endangered Bird Treaty with Japan, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the International Convention for the Northwest Atlantic Fisheries, the International Convention for the High Seas Fisheries of the

North Pacific Ocean, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and other international agreements, to conserve and protect, where practicable, the various species of fish, wildlife, and plants facing extinction; that a key to more effective protection and management of native fish and wildlife that are endangered or threatened is to encourage and assist the States in developing programs for such fish and wildlife; and that the conservation, protection, restoration, or propagation of such species will inure to the benefit of all citizens.

(b) The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, protected, or restored, to provide a program for the conservation, protection, restoration, or propagation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to protect endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Convention" means the Convention

on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(2) The term "endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range.

(3) The term "fish or wildlife" means any wild member of the animal kingdom, whether or not raised in captivity, including without limitation, any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, or crustacean, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(4) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving

in any country or countries outside the United States.

(5) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(6) The term "person" means (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(7) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(8) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exporta-

tion of terrestrial plants, the term means the Secretary of Agriculture.

(9) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

(10) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(11) The term "take" means to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

(12) The term "threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(13) The term "United States", when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) The Secretary shall by regulation determine whether any fish or wildlife is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b)(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the fish or wildlife concerned is normally found or whose citizens harvest such fish or wildlife on the high seas; except that in any case in which such determinations involve native species of fish or wildlife, the Secretary shall consult with and consider the recommendations of each State concerned before adding such species to, or removing such species from, any list published pursuant to subsection (c) of this section.

(2) In determining whether or not any fish or wildlife is an endangered species or a threatened species, the Sec-

retary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such fish or wildlife, whether by predator control, protection of habitat and food supply, or other fish or wildlife conservation or management practices, within any area under the jurisdiction of any such nation or political subdivision.

(3) The Secretary shall give full consideration regarding whether or not fish or wildlife which have been designated by any foreign country, or pursuant to any international agreement, as requiring protection from unrestricted commerce are endangered species or threatened species.

(c)(1) The Secretary shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all fish or wildlife determined by him to be endangered species and a list of all fish or wildlife determined by him to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, also conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to

either of the lists published pursuant to paragraph (1) of this subsection, but only when he finds and publishes his finding that, to his satisfaction, such person has presented substantial evidence to warrant such a review.

(3) Any list in effect on the day before the date of the enactment of this Act of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this Act, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this Act. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5, United States Code.

(d) Whenever the Secretary lists a species of fish or wildlife as an endangered species or a threatened species pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, or propagation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a) of this Act with respect to endangered

species; except that with respect to native species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.

(e) For the purpose of facilitating the enforcement of this Act, the Secretary may from time to time, by regulation, treat, to the extent he deems it advisable, any species of fish or wildlife or of any plant which is not listed pursuant to section 4 of this Act as an endangered species or threatened species, if such species so closely resembles in appearance, at the point in question, a species of fish or wildlife or plant which has been so listed that substantial difficulty is posed to enforcement personnel in attempting to differentiate between listed and unlisted species or subspecies of fish or wildlife or plants, and this difficulty poses an additional threat to an endangered species or threatened species.

(f) Section 553 of title 5, United States Code, shall apply with respect to any regulation issued pursuant to this Act.

LAND ACQUISITION

SEC. 5. (a) The Secretary shall establish and implement a program to conserve, protect, restore, or propagate (A) fish or wildlife which are listed as endangered species *or threatened species pursuant to section 4 of this Act or (B) plants which are included in Appendices to the Convention. To carry out such program, the Secretary—*

(1) shall utilize the land acquisition and other authority under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

SEC. 6. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation, protection, restoration, or propagation of endangered or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c) In furtherance of the purposes of this Act, the Secretary is authorized to enter into cooperative agreements to provide financial assistance to States, through their respective fish and wildlife agencies, which maintain or establish adequate and active programs to manage and protect endangered and threatened species. In order for any State to qualify for assistance under this subsection, the Secretary must find annually that under the State program—

(1) authority resides in the State fish and wildlife agency to manage and protect native species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(2) the State fish and wildlife agency has established acceptable management programs, consistent with the purposes and policies of this Act, for all species of fish or wildlife indigenous to the State which are deemed by the Secretary to be endangered or threatened;

(3) the State fish and wildlife agency is authorized to conduct investigations to determine the status and requirements for survival of indigenous species or subspecies of fish and wildlife;

(4) the State fish and wildlife agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for protection and management of endangered or threatened species; and

(5) provision is made in such programs for public participation in designating indigenous species or subspecies of fish or wildlife as endangered or threatened.

(d)(1) Funds appropriated annually for purposes of assistance under subsection (c) shall be available to the Secretary for allocation to the States under cooperative agreements to assist in development by States of programs for management and protection of endangered and threatened species of fish or wildlife including research, censusing, law enforcement, and habitat acquisition or improvement. The Secretary shall make an allocation of appropriated funds to the States based on consideration of—

(A) the international obligations of the United States to protect a species;

(B) the national significance of a species found to be endangered or threatened within a State; and

(C) the potential for preventing extinction of a species and restoring such species to nonendangered or nonthreatened status.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this Act.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States, having a common interest in a program that the Secretary deems

to meet the criteria of paragraph (1), enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement.

(e) Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements

this Act, but not less restrictive than the prohibitions so defined.

(g) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(h) There are hereby authorized to be appropriated for the fiscal years 1974, 1975, and 1976 such sums as may be necessary to carry out the purposes of this section.

INTERAGENCY COOPERATION

SEC. 7. (a) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purpose of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the protection of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

(b) The Secretary of Agriculture is authorized, notwithstanding the provisions of any other law, to bear

the full cost, or any lesser amount that he, in consultation with the Secretary, may determine desirable to accomplish the objectives of the Act, of the cost of installing any practice, measure, work of improvement, facility, or other developmental, protective, or management systems on private land, the primary purpose of which is to enable landowners to comply with the regulations, or other recommendations, of the Secretary pertaining to the conservation, protection, restoration, or propagation of such species. The Secretary of Agriculture, in carrying out the purposes of this subsection, shall utilize his authorities to conduct research and investigations into vegetative and structural methods and other methods and practices, measures, works of improvement, and facilities most appropriate or effective in the protection, control, management, or enhancement of such species. If determined desirable, the Secretary and the Secretary of Agriculture may jointly carry out such research and investigations. The Secretary may transfer to the Secretary of Agriculture such funds as may be necessary to carry out the purposes of this subsection.

INTERNATIONAL COOPERATION

SEC. 8. (a) As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appro-

priation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral

agreements with foreign countries to provide for such protection, conservation, restoration, or propagation; and

(3) foreign persons who directly or indirectly take fish or wildlife and plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and plants and their habitat.

(c) After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife and plants; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife and plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary

may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

PROHIBITED ACTS

SEC. 9. (a) Except as provided in section 10 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States

any endangered species listed pursuant to section 4 of this Act;

(2) take any such species within the United States or the territorial sea of the United States, upon the high seas, or in any foreign country, except that this paragraph shall apply within any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that the taking of any such species is contrary to the law of such State;

(3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of paragraph (2);

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species:

(5) sell or offer for sale in interstate or foreign commerce any such species; or

(6) violate any regulation promulgated by the Secretary pursuant to section 4(d) of this Act.

(b)(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied, and

(C) the applicable requirements of subsections (d) and (e) of this section have been satisfied,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(c)(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (B) are imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained a permit from the Secretary.

(2) Any person required to obtain a permit under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly

disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(d) It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (B) are imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(e)(1) It is unlawful for any person subject to the

jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(f) It is unlawful for any person subject to the jurisdiction of the United States to attempt or conspire to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

SEC. 10. (a) The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

(b)(1) If any person enters into a contract with respect to a species or subspecies of fish or wildlife or plant before the date of the publication in the Federal Register of notice of a proposed listing of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9 (a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of a proposed listing of the species or subspecies concerned, or shall apply to a quantity of fish or wildlife or plants

in excess of that specified by the Secretary; (B) the one-year period for those species or subspecies of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used for primarily commercial purposes.

(2) The Secretary shall publish notice in the Federal Register of each application for an exemption which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(c) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(d) Any taking by an Indian, Aleut, or Eskimo of any

marine mammal (as defined in section 2(5) of the Marine Mammal Protection Act of 1972) which is listed pursuant to section 4(a) of this Act as an endangered species or threatened species shall not be deemed to be in violation of this Act or any regulation issued pursuant thereto if such taking is lawful under section 101(1) of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 11. (a)(1) Any person who violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a) (1), (2), (3), (4), or (5), (b), (c) (other than a regulation relating to recordkeeping or filing of reports), (e), or (f) of section 9 of this Act may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. Any person who knowingly violates any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil ac-

tion in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b)(1) Any person who knowingly commits an act which violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a) (1), (2), (3), (4), or (5), (b), (c) (other than a regulation relating to recordkeeping or filing of reports), (e), or (f) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who knowingly commits an act which violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both. Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed $2,500 to any person who furnishes information which leads to a conviction for a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock,

to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(c) The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d)(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel,

services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph

(4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or

alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act, including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(f)(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and

any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit

brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(g) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

(h) Nothing in this Act shall be construed as supersed-

ing or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of providing adequate protection to such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONFORMING AMENDMENTS

SEC. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to *control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."*

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered and Threatened Species Act of 1973 as endangered species or threatened species,".

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l—9(a)(1)) is amended by striking out:

> *"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."*

and inserting in lieu thereof the following:

> *"ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered and Threatened Species Conservation Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered species of fish or wildlife or plants."*

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k-1), is amended to read as follows:

"The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the protection of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section,

and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and

inserting in lieu thereof the following: "Endangered and Threatened Species Conservation Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered and Threatened Species Conservation Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered and Threatened Species Conservation Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered and Threatened Species Conservation Act of 1973".

REPEALER

SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6), is repealed.

AUTHORIZATION OF APPROPRIATIONS

Sec. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed $6,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 and not to exceed $10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed $1,500,000 for fiscal year 1975 and not to exceed $2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

EFFECTIVE DATE

Sec. 16. This Act shall take effect on the date of its enactment.

Amend the title so as to read: "A bill to provide for the conservation, protection, restoration, or propagation of endangered and threatened species of fish, wildlife, and plants, and for other purposes."

Union Calendar No. 194

93D CONGRESS
1ST SESSION

H. R. 37

[Report No. 93-412]

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

By Mr. DINGELL, Mr. CLARK, Mr. MAILLIARD, Mr. MOSHER, Mr. DOWNING, Mr. RUPPE, Mr. GOODLING, Mr. BRAY, Mr. STUBBLEFIELD, Mr. MURPHY of New York, Mr. JONES of North Carolina, Mr. BIAGGI, Mr. ANDERSON of California, Mr. KYROS, Mr. MCCLOSKEY, Mr. STEELE, Mr. DU PONT, Mr. TIERNAN, Mr. JAMES V. STANTON, Mr. METCALFE, Mr. NEDZI, Mr. O'HARA, Mr. WILLIAM D. FORD, Mrs. GRIFFITHS, and Mr. MOSS

JANUARY 3, 1973

Referred to the Committee on Merchant Marine and Fisheries

JULY 27, 1973

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-412

ENDANGERED AND THREATENED SPECIES CONSERVATION ACT OF 1973

JULY 27, 1973.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 37]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 37) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute which appears in the reported bill in italic type.

The other amendment modifies the title of the bill to make it conform to the changes made by the amendment to the text.

PURPOSE OF THE LEGISLATION

There is presently in effect a series of Federal laws designed to protect species of fish and wildlife which may face extinction without that protection. The first of these laws was passed in 1966 and the second in 1969; at the time they were enacted, they were adequate to meet the demands as they then existed.

Subsequent events, however, have demonstrated the need for greater flexibility in endangered species legislation, more closely designed to meet their needs. In response to this need, legislation was proposed in the last Congress, but failed of passage. The Congress is now in a position to move in this critical area.

H.R. 37, as amended, combines features of the Administration bill (H.R. 4758), and the original H.R. 37. It is designed to widen the protection which can be provided to endangered species under the laws now on the books.

The principal changes to be effected by the new legislation include:

1. It extends protection to animals which may become endangered, as well as to those which are now endangered.
2. It permits protection of animals which are in trouble in any significant portion of their range, rather than threatened with worldwide extinction.
3. It makes taking of such animals a Federal offense.
4. It eliminates existing dollar ceilings ($15 million, already consumed) on acquisition of critical habitat areas.
5. It gives management authority for marine species to the Department of Commerce.
6. It authorizes the use of counterpart funds, where proper.
7. It allows states to adopt more restrictive legislation than the Federal laws.
8. It clarifies and extends the authorities of the Department of Agriculture to assist landowners to carry out the purposes of the Act.
9. It directs a study of the problems involved in the domestic regulation of trade in endangered plants.

A recent international Convention produced a draft treaty which responds to the needs of endangered species and imposes a worldwide pattern of restrictions upon the unfettered trade in species of animals and plants which may face extinction. The legislation considered and reported by the Committee attempts to work into this framework those steps which may be necessary or desirable to accomplish this purpose as well.

LEGISLATIVE BACKGROUND

According to the Department of the Interior, there may be more than 100 species of fish and wildlife which are presently threatened with extinction within the United States. The recently concluded international Convention on International Trade in Endangered Species of Wild Fauna and Flora listed 375 species of animals as imminently threatened with extinction throughout the world and another 239 species of animals as not yet threatened with extinction but requiring additional controls over their trade.

The threat to animals may arise from a variety of sources; principally pollution, destruction of habitat and the pressures of trade. For the most part, United States executive and legislative attention in recent years has concentrated upon the latter factor in attempting to enforce legislation designed to reduce or eliminate the financial incentives to trading in endangered species of fish and wildlife.

Prior to enactment of endangered species legislation, United States efforts to protect fish and wildlife were concentrated on enforcement of the Lacey and Black Bass Acts, which made it illegal for any person to transport in interstate commerce any fish or wildlife taken in violation of national, state or foreign laws. These Acts are still on the books, and some conservationists feel that they are even now inadequately utilized in the interests of protecting endangered species.

In 1966 the Congress adopted the first "Endangered Species Preservation Act" (P.L. 89–699). This Act directed the Secretary of the Interior to carry out a program to conserve and encourage the growth of replacements for selective species of *native* fish and wildlife that he found to be threatened with extinction. Addressing itself to the issue of habitat protection, the Act also consolidated and expanded the authority of the Secretary of the Interior relating to the administration of the National Wildlife Refuge System.

The next step took place when the 91st Congress enacted the Endangered Species Conservation Act of 1969 (P.L. 91-135). This Act expanded the 1966 Act in several ways:

(1) It authorized the establishment of a list of fish and wildlife threatened with extinction and prohibited the importation from foreign countries of any such species. Exceptions were provided to allow importations for scientific, educational, zoological, and/or propagational purposes and to allow one-year economic hardship exemptions in specified cases.

(2) It made it unlawful to buy or sell any animal taken in violation of the laws of any State or foreign country.

(3) It increased the authorization for funds to a limit of $2.5 million per area, or $5 million per year, with a total overall ceiling of $15 million.

(4) It designated certain ports of entry for the importation of fish and wildlife and their products.

In the years since 1969, the need for further amendment of the domestic endangered species legislation has become clear. Accordingly, the Administration proposed a bill for this purpose in the 2nd Session of the 92nd Congress (H.R. 13081), to substitute a new and more comprehensive endangered species act for those enacted in 1966 and 1969. Hearings were held on that legislation, but due to lack of time neither body acted upon it.

The Administration bill was reoffered early this year as Executive Communication No. 442 and introduced by Mr. Dingell for himself and several other members as H.R. 4758. Mr. Dingell had earlier introduced, for himself and others, an alternative form of legislation based on the 1972 hearings (H.R. 37). These bills, and a number of similar and identical bills, were before the Committee when it held hearings on this question on March 15, 26 and 27, 1973.

These hearings were held on the heels of an international meeting of technical experts and national representatives in Washington on these and similar questions in February and March. This meeting was a direct outgrowth of earlier U.S. endangered species legislation, which had mandated such an international ministerial meeting for the purpose of developing effective international controls on the unrestricted trade in endangered species. The result of that meeting was the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973—a Convention which has been widely acclaimed as eminently successful in devising forceful and practical mechanisms for controlling these problems.

Essentially, the Convention requires creation of 3 types of endangered species lists:

Appendix I lists species of animals and plants imminently threatened with extinction which are or may be affected by trade and which therefore may be traded only upon approval by the countries of both import and export, when not to be used for commercial purposes.

Appendix II lists species of plants and animals which are not yet necessarily threatened with extinction but which may become so unless subjected to strict regulation. Export permits only will be required for trade in species on Appendix II.

Appendix III is provided as a means for countries to list species protected within their jurisdiction for the purpose of preventing or restricting their exploitation, whether or not these species are threatened with extinction. These will also require an export permit, once listed.

Because of the short interval between the conclusion of the Convention and the consideration of this legislation, it was not possible to develop a complete consensus on the additional steps that might and should be taken to implement the Convention. Technically, of course, it is unnecessary to do this since the Convention has not yet been ratified and is not yet effective. It was and is the Committee's view, however, that it would be proper for this country to take every appropriate step at this time to bring our own laws into conformity with the Convention procedures, so that no further legislation will be necessary to implement it, once it has become effective.

BACKGROUND AND NEED FOR THE LEGISLATION

Throughout the history of the world, as we know it, species of animals and plants have appeared, changed, and disappeared. The disappearance of a species is by no means a current phenomenon, nor is it an occasion for terror or panic.

It is however, at the same time an occasion for caution, for self-searching and for understanding. Man's presence on the Earth is relatively recent, and his effective domination over the world's life support systems has taken place within a few short generations. Our ability to destroy, or almost destroy, all intelligent life on the planet became apparent only in this generation. A certain humility, and a sense of urgency, seem indicated.

From all evidence available to us, it appears that the pace of disappearance of species is accelerating. As we homogenize the habitats in which these plants and animals evolved, and as we increase the pressure for products that they are in a position to supply (usually unwillingly) we threaten their—and our own—genetic heritage.

The value of this genetic heritage is, quite literally, incalculable. The blue whale evolved over a long period of time and the combination of factors in its background has produced a certain code, found in its genes, which enables it to reproduce itself, rather than producing sperm whales, dolphins or goldfish. If the blue whale, the largest animal in the history of this world, were to disappear, it would not be possible to replace it—it would simply be gone. Irretrievably. Forever.

One might analogize the case to one in which one copy of all the books ever printed were gathered together in one huge building. The position in which we find ourselves today is that of custodians of this building, and our choice is between exercising our responsibilities and ignoring them. If these theoretical custodians were to permit a madman to enter, build a bonfire and throw in at random any volume he selected, one might with justification suggest that others be found, or at least that they be censored and told to be more careful in the future. So it is with mankind. Like it or not, we are our brothers' keepers, and we are also keepers of the rest of the house.

From the most narrow possible point of view, it is in the best interests of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask.

To take a homely, but apt, example: one of the critical chemicals in the regulation of ovulation in humans was found in a common plant. Once discovered, and analyzed, humans could duplicate it synthetically, but had it never existed—or had it been driven out of existence before we knew its potentialities—we would never have tried to synthesize it in the first place.

Who knows, or can say, what potential cures for cancer or other scourges, present or future, may lie locked up in the structures of plants which may yet be undiscovered, much less analyzed? More to the point, who is prepared to risk being those potential cures by eliminating those plants for all time? Sheer self-interest impels us to be cautious.

The institutionalization of that caution lies at the heart of H.R. 37, as ordered reported to the Congress. Several scores of nations have similarly endorsed the need for comparable legislation within their own countries by signing the recent Convention which takes a giant step in this direction.

Man can threaten the existence of species of plants and animals in any of a number of ways, by excessive use, by unrestricted trade, by pollution or by other destruction of their habitat or range. The most significant of those has proven also to be the most difficult to control: the destruction of critical habitat.

Clearly it is beyond our capability to acquire all the habitat which is important to those species of plants and animals which are endangered today, without at the same time dismantling our own civilization. On the other hand, there are certain areas which are critical which can and should be set aside. It is the intent and purpose of this legislation to see that our ability to do so, at least within this country, is maintained. H.R. 37 articulates and enhances this purpose and ability.

Restrictions upon the otherwise unfettered trade in these plants and animals are a significant weapon in the arsenal of those who are interested in the protection of these species. The recent international Convention on International Trade in Endangered Species of Wild Fauna and Flora was directed primarily at this problem: most of the provisions of H.R. 37 are also designed to deal with the problem in one way or another.

It is paradoxical that the scarcer an animal may be, the more people may be willing to pay to acquire it. The great whales may be said to have been involuntary beneficiaries of such an equation; the same is true of the so-called "spotted cats"—tigers, jaguars, cheetahs and others—whose skins have been sought by furriers and hunters around the world. The inevitable effect of this popularity has been to make them scarce, and perhaps to endanger their survival.

Their very scarcity and value, however, may be used as a lever to promote their protection. If the countries in which these and other valuable animals may be found are sufficiently alert and enlightened, this should encourage them to maintain healthy and viable stocks of these animals as a resource. The nurture and protection of these resources may ultimately prove to be the greatest incentive for their protection. H.R. 37 encourages such programs in a number of ways.

Honesty compels us to admit that steps taken by H.R. 37 to close the U.S. market to trade in endangered and threatened species may not be sufficient, in and of themselves, to remove pressure and thus to allow these species to recover. Passage of this legislation is, however, of importance—both because the United States is an important market, and because of the precedent that it will create. The Convention was especially significant in this respect; it was built upon the model that had already been created in this country, and it exerts a strong pressure upon other countries to follow suit.

Existing United States legislation was, when first proposed and adopted, adequate to meet the pressures upon endangered species at the time. Changing patterns of trade and exploitation have, however, created a situation in which this legislation is no longer entirely adequate. At times, present laws are too broad, and at others, they are too narrow and restrictive.

The events of the past few years have shown the critical nature of the interrelationships of plants and animals between themselves and with their environment. Another word for the study of these interrelationships is "ecology." The hearings proved (if proof is still necessary) that the ecologists' shorthand phrase "everything is connected to everything else" is nothing more than cold, hard fact.

In practically every circumstance endangered species are at the outer selves pushed out of that environment, harried and hunted by those edges of the circumstances in which they evolved. They find themselves pushed out of that environment, harried and hunted by those who would use them for their own advantage. Any program for the protection of endangered species must necessarily concern itself with more than a simple "hands-off" attitude toward the animals and plants themselves.

Such an attitude lies at the heart of the legislation here presented to the House. The basic purpose of the Act is clearly stated in the legislation; to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, protected or restored. In furtherance of this purpose, the bill declares a policy that Federal agencies are to use the authorities that are available to them in carrying out the objectives of the bill.

During the hearings on the legislation, it became apparent that there was little controversy as to the need for a bill of the types before the Committee. Both H.R. 37 and H.R. 4758, the Administration bill, followed essentially the same pattern; and as reported by the Committee, H.R. 37 adopts elements of both.

The principal areas of discussion during the hearings and in markup of the legislation centered on the proper role of the state and Federal governments with regard to endangered species programs, and the protection of plants. As regards both of these issues, there is fairly general agreement on the nature of the problem, but there was no clear agreement as to the best course to follow.

STATE AND FEDERAL RELATIONSHIPS

Any bill which is designed to deal with the complicated issues involved in protection of endangered species must do so in the light of at least two competing considerations: first, protection of endangered species is not a matter that can be handled in the absence of coherent national and international policies: the results of a series of unconnected and disorganized policies and programs by various states might well be confusion compounded. Second, however, the states are far better equipped to handle the problems of day-to-day management and enforcement of laws and regulations for the protection of endangered species than is the Federal government. It is true, and indeed desirable, that there are more fish and game enforcement agents in the state system than there are in the Federal government. Any reasonable and responsible program designed to protect these species must necessarily take account of this fact.

Balancing these two factors produced the legislation in the form in which it is presented to the Congress. The bill places the essential responsibility for establishment of the lists of endangered species, and amendment of these lists, in the Secretary. At the same time it is expected and required that there be good faith consultation between the Secretary and the states, as well as with other interested and knowledgeable parties. The states have no veto over the listing or delisting of endangered species, but they do have the power to discuss the problems and to make recommendations as to their resolution.

Regulatory jurisdiction is given to the Federal government under this legislation, and if a cooperative agreement is successfully negotiated and signed, to the states as well. The subject of cooperative agreements was discussed extensively within the Committee and with other knowledgeable people. It was and is contemplated that representatives of the state and Federal governments, who would in any case be working together, would negotiate these agreements. These might or might not include financial incentives to assist in the operation of endangered species programs.

Where a cooperative agreement has been put into effect, the bill allows concurrent jurisdiction over the species affected in both the state and Federal judicial systems. The ultimate approval or disapproval of these cooperative agreements lies within the discretion of the Secretary, who has been given broad powers of review, together with the authority to intervene and to suspend any such agreement in the interests of the species affected, if he feels that the agreement is not being properly carried out or if he feels that new circumstances require additional steps to be taken that had not been contemplated at the time the original agreement had been prepared.

The question of preemption of state laws was of great interest during the hearings, due in part to the fact that the language in the Administration bill was susceptible of alternative interpretations. Accordingly, the Committee rewrote the language of the Administration bill to make it clear that the states would and should be free to adopt legislation or regulations that might be more restrictive than that of the Federal government and to enforce the legislation. The only exception to this would be in cases where there was a specific Federal permission for or a ban on importation, exploitation or interstate commerce; in any such case the State could not override the Federal action. In every other respect, the State powers to regulate in a more restrictive fashion or to include additional species remain unimpaired.

Because the State roles with regard to endangered species are so significant, the Committee felt it desirable to incorporate a program allowing fiancial assistance for those programs. Any such program might be a part of, or independent from, arrangements under which the states would agree to manage and protect such species on the Federal list as might be found within their borders. The Committee provided a separate authorization in this regard, to make it clear that any funds to be paid to the states under this section should come from that specific authorization, rather than from the general authorization contained in Section 15 of the bill.

PLANTS

The hearings demonstrated that the protection of plants must also be a matter of urgent concern. The Administration bill did not address itself to the problem, while H.R. 37, as introduced, treated plants in like manner as animals. There were vigorous objections to this approach by some, to the effect that the circumstances and the regulatory mechanisms respecting animals were not and should not be the same for plants.

It must be recognized that plant species and subspecies are even more vulnerable to man's intervention than are animals, since they cannot move to more hospitable circumstances when necessary. Until recent times, it should also be pointed out, most species of plants were not under the same kinds of heavy pressures that affect animals. Variations in plant species typically occur in areas where land development pressures were traditionally least intense: variations in grasses found at the eastern and western fringes of the American Great Plains before the advent of the white man would be almost insignificant, whereas plant communities in high mountain valleys, on the other hand, might vary significantly within a few miles of each other. It has only been in the past few years that these more remote areas have come under intense development pressures, and so it is that plant protection has become correspondingly more urgent.

The Secretary of Agriculture presently exercises considerable authority in the regulation of the importation and exportation of plants, and it appears that these authorities can be used and adequate enforcement mechanisms devised for the purposes of the Act without significantly changing existing programs. This was preserved in H.R. 37. Further, the recent Convention laid upon signatory members a responsibility for devising adequate programs to control the importation and exportation of both plants and animals that might be or become endangered. At the same time, however, the question of regulation of interstate commerce in species of plants raises a number of unresolved issues which, with justification, might be termed thorny.

The Committee resolved the issue by rewriting the legislation to provide authority for the acquisition of critical habitat of plants in the U.S., the regulation of their importation and exportation, and foreign assistance programs consistent with the purposes and policies of the Act. The additional questions of national regulation of endangered species of plants were assigned to the Smithsonian Institution, which was directed to study the problems of management on a national scale, and to prepare lists of present and potential endangered species of plants. It was also directed to report back on the results of its study within one year of the effective date of the legislation. It is expected that at that time, the Committee will be in a position to consider the matter and to recommend any further amendments to his legislation that may appear appropriate and desirable.

LAND ACQUISITION

The protection of the habitat of endangered species is clearly a critical function of any legislation in this area. The earlier Acts of the Congress in 1966 and 1969 provided an ultimate authorization of fifteen million dollars for the protection of habitat. That fifteen million dollars has now been used up, and the authority no longer exists. The Administration recommended that this authority be expanded to allow the Secretary to use funds from the Land and Water Conservation Fund without specific authorizations, and to use authorities under this legislation, under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act. The Committee agreed with this approach, and the bill so provides.

IMPLEMENTATION OF CONVENTION

The International Convention was signed on March 3; it has not yet been formally ratified by any country. Notwithstanding that fact, however, the Committee felt strongly that it was desirable to take any steps that might be appropriate at this time, so that when the Convention does come into force, as it almost certainly will, no further legislation will be needed at that time to implement it.

OTHER LEGISLATION

As reported, H.R. 37 provides ample authority for the Secretary of the Interior—authority which the Committee expects him to exercise—to provide protection for species such as the Everglades Kite and the pupfish. These species are already listed as endangered, but require additional protection in the form of habitat acquisition and/or the enforcement of strict regulations. In this way, the bill will render unnecessary other legislation presently pending before the Committee which deals specifically with these species.

SECTION-BY-SECTION ANALYSIS

SHORT TITLE

Sec. 1. This Act may be cited as the "Endangered and Threatened Species Act of 1973."

FINDINGS, PURPOSES AND POLICY

Sec. 2. (a) The findings by Congress are to the effect that the decline and disappearance of species and subspecies is a matter of national and international concern, and that it is necessary to take steps for the benefit of all people to halt and, if possible, to reverse this decline.

(b) The essential purpose of the Act is to provide a means for protecting the ecosystems upon which we and other species depend. Another, allied purpose is to provide a specific program for the protection of endangered species,[1] and a third allied purpose is to take the necessary steps to implement international conventions and treaties which bear upon this objective.

(c) The policy of the legislation is to state a national purpose that all federal agencies and instrumentalities will take steps within their authorities to protect endangered species.

DEFINITIONS

Sec. 3. (1) "Convention" means the recently concluded Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) The term "Endangered Species" means any species of fish or wildlife which is in danger of extinction throughout its entire range, or any portion of its range. This definition is a significant shift in the definition in existing law, which considers a species to be endangered only when it is threatened with worldwide extinction. It includes the possibility of declaring a species endangered within the United States where its principal range is in another country, such as Canada or Mexico, and members of that species are only found in this country insofar as they exist on the periphery of their range.

(3) The term "fish or wildlife" means all wild animals, whether or not raised in captivity. Thus, in addition to controlling trade in captive animals, the bill makes it clear that an animal which has been raised in captivity and released, or which escaped, would be subject to protection under the provisions of this Act. The term also includes any parts or products of these animals.

(4) "Foreign commerce" is defined quite broadly and evidences a clear intent of the Congress to reach acts committed beyond the boundaries of the United States, including those on the high seas and in foreign countries, if those actions were taken by persons subject to U.S. jurisdiction.

(5) "Import" means any introduction into areas subject to U.S. jurisdiction, or attempt to introduce into those areas, regardless of whether this constitutes an importation under Custom laws.

(6) "Person" is defined broadly enough to cover any person or entity, including employees of state or Federal agencies.

(7) "Plant" means any member of an endangered or threatened species within the plant kingdom, or any part of such plant.

(8) "Secretary" incorporates the split in jurisdiction contained in the 1970 Reorganization Plan, which had the effect of assigning management authority for certain animals to the Department of the Interior and for certain other animals to the Department of Commerce. That reorganization did not purport to change responsibilities specifically assigned to the Secretary of the Interior with regard to the listing of endangered species, and those responsibilities are not affected by this bill. "Secretary" means the Secretary of Agriculture with regard to the importation or exportation of terrestrial plants:

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[1] In this discussion the words "endangered species" will be taken, in the interests of space and time, to include threatened species unless the context clearly indicates otherwise.

marine plants would be a matter of concern to the Secretary of Commerce.

(9) "Species" is defined broadly enough to include any subspecies of fish or wildlife or plants, or any population of such species.

(10) "State" means any state, territory or possession.

(11) "Take" is defined broadly. It includes harassment, whether intentional or not. This would allow, for example, the Secretary to regulate or prohibit the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young.

(12) "Threatened species" means any species which may become endangered. It would certainly include those species which are presently on the decline and those which have achieved a stabilized position, or even were on the increase, so long as the Secretary was satisfied that a measurable risk to those species could be said to exist.

A species could be determined to be "threatened," even in cases where it is commercially harvested at the time the determination is made, if inadequately regulated harvesting has resulted in a serious decline of population stocks throughout all or a significant portion of its range and the Secretary determines that regulations controlling activities affecting the species would serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act set forth in section 2(b).

(13) "United States" includes all states as defined in the Act.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

Sec. 4. (a) This paragraph gives to the Secretary the authority to determine whether any fish or wildlife species is endangered because of any of a combination of several listed events. The section is drawn broadly to allow the Secretary to declare endangered or threatened any species for any legitimate reason.

(b) This section requires the Secretary to make determinations of endangered status on the basis of the best available evidence, after consultation with individuals, organizations, states or foreign countries, as appropriate. Where any such species exists within the boundaries of a given state, the Secretary is required to consult with the appropriate agencies within that state before making a final determination. The section requires the Secretary to give full consideration to efforts being currently made by any foreign country to protect fish or wildlife species within that country, in making a determination as to whether or not those species are endangered or threatened. There is provided ample authority and direction to the Secretary to consider the efforts of such countries in encouraging the maintenance of stocks of animals for purposes such as trophy hunting. If, on the other hand, the Secretary feels that inadequate measures are being taken by those countries, he is authorized and expected to take any steps necessary to discourage activities which might be inimical to those species by persons subject to U.S. jurisdiction. The Secretary is also required to consider, in establishing such lists, any animal which has been designated by any foreign country, or pursuant to any international convention, as requiring protection from unrestricted commerce.

(c) The Secretary is required to publish lists of endangered species and threatened species in the Federal Register. If any person proposes that a species be listed or delisted, the Secretary must review the status of that species when he determines in good faith that substantial evidence has been presented in support of the proposed action. The Committee intends, by this section, to require that the discretion of the Secretary be exercised so as to provide adequate protection to any species of fish or wildlife which is or which might become endangered. The section preserves designations under current law by requiring republication of existing lists. Until such republication, those species continue to be protected; there will be no hiatus pending such republication.

(d) The Secretary is authorized to issue appropriate regulations to protect endangered or threatened species; he may also make specifically applicable any of the prohibitions with regard to threatened species that have been listed in section 9(a) as are prohibited with regard to endangered species. Once an animai is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species.

With regard to theatened species, the section goes on to indicate that, if a cooperative agreement has been reached, the Federal enforcement powers will thereafter be coextensive and concurrent with the state powers of enforcement. This will allow both state and Federal management officials to seek enforcement through both state and Federal courts—whichever seems most appropriate in the circumstances of a given case. The element of concurrent jurisdiction with regard to threatened species, and, as will later appear, with regard to endangered species, is a vital element of the protective scheme contemplated under this Act.

(e) This paragraph provides authority to the Secretary to regulate species which resemble, either in the natural state or in the form in which they enter the country, species which are listed under the authority of section 4. If the enforcement agencies are confronted by a situation in which they cannot adequately distinguish between listed and nonlisted species of animals, they are authorized to ban the importation of the "look-alikes." It is not the intention of the Committee to grant absolutely unrestricted authority to the Secretary in this regard, but if there is a legitimate problem and the Secretary is confronted by those who claim that the product in question does not derive from an endangered species, he may act to resolve the uncertainty by listing the species.

(f) This section requires that the rule-making procedures of the Administrative Procedures Act shall be applied to regulations adopted under this Act.

LAND ACQUISITION

Sec. 5. This section allows the Secretary to use broad authorities under this Act, the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act for the purpose of acquiring lands, waters and partial or total interests therein in order to establish programs contemplated under the Act or international Convention. The section authorizes the Secretary to use funds available to him under the Land and Water Conservation Act without regard to the appropriation ceilings provided elsewhere.

The Department of the Interior, which will be exercising primary authorities with regard to the use of these Land and Water Conservation Fund moneys, was unable to provide a specific set of figures as to anticipated habitat acquisition under this section, but indicated that its present expectations were that the funds requested would not exceed $1.4 million in fiscal year 1974, $8.5 million in fiscal 1975 and $12.5 million in fiscal 1976.

COOPERATION WITH THE STATES

SEC. 6. (a) This subsection requires the Secretary to consult with the affected States in carrying out any program authorized under the Act. That consultation includes discussions before acquiring lands or any other action taken under the authority of this Act.

(b) The Secretary is authorized to enter into agreements with any State regarding the administration and management of lands acquired for purposes of this Act. Revenues received are subject to existing legislation concerning state participation in revenues from the National Wildlife Refuge System.

(c) The Secretary is given authority and direction to enter into cooperative agreements, which may involve financial assistance regarding the management of endangered species, with those state jurisdictions. Any such cooperative agreement must be pursuant to a finding by the Secretary that the state has adequate statutory and regulatory authority in its fish or game agencies, or the combined agency, as the case may be, to maintain a program; that the programs are in fact consistent with the purposes of the Act and are acceptable; that the agency has sufficient authority to perform necessary investigations on the status of endangered species or their requirements; that the state agency is authorized to establish programs, including land acquisition programs, to carry out the provisions of this Act; and that there is adequate provision for public participation in state endangered species programs.

(d) The Secretary is authorized to allocate funds for financial assistance to the states to assist state programs. With regard to the moneys authorized under the Act, the Secretary is required to consider several listed factors in determining which state gets how much money. Any funds allocated which are unobligated as of the end of the fiscal year may be expended until the end of the next fiscal year; lapsed funds may be reallocated by the Secretary pursuant to the Act. Any cooperative agreements executed pursuant to this authority must describe the responsibilities of the parties, the benefits expected to be derived, the costs of the programs and the state and Federal share of those costs. Under no circumstances may the Federal share exceed ⅔ of the total program costs, except that the Federal government may assume ¾ of the program costs if two or more states develop a joint or regional program which is acceptable to the Secretary. He is given authority to advance funds to the state on a reimbursable basis.

(e) The Secretary is required to review any such cooperative and cost-sharing agreements at least annually. This authority would allow the Secretary to intervene at any time if the circumstances were so changed as to render it imperative in his judgment that the cooperative agreement be terminated or that a new agreement be negotiated. The Committee expects the Secretary to provide reasonable notice to the states and other affected parties, wherever possible, of his intentions in making any such modification.

(f) This paragraph indicates that the states are to be free to develop regulatory mechanisms which are more stringent or more restrictive than those of the Federal government. Existing state endangered species programs would, for example, be in a position to include species which were not on the Federal list. The only exception to this is contained in the language which expressly prohibits the state from voiding actions specifically permitted by Federal agencies or from permitting specific actions forbidden by Federal agencies. In all other regards, the state law is not pre-empted, but is merely subject to the Federal "floor" of regulations under the Act. Thus, laws already passed in States such as New York, California and Hawaii, which list additional species or prohibit such activities as sales within their jurisdiction would reman unaffected.

(g) This paragraph authorizes the Secretary to promulgate any appropriate regulations to carry out the section regarding financial assistance.

(h) This paragraph authorizes the Secretary such funds as may be necesary to carry out the purposes of the section. It is not anticipated that such funds will exceed $10 million any fiscal year.

INTERAGENCY COOPERATION

Sec. 7. (a) This subsection requires the Secretary and the heads of all other Federal departments and agencies to use their authorities in order to carry out programs for the protection of endangered species, and it further requires that those agencies take the necessary action that will not jeopardize the continuing existence of endangered species or result in the destruction of critical habitat of those species. To the extent that those actions involve the protection of habitat, the states must be consulted. Under the authority of this paragraph, for example, the Director of the Park Service would be required to conform the practices of his agency to the need for protecting the rapidly dwindling stock of grizzly bears within Yellowstone Park. These bears, which may be endangered, and are undeniably threatened, should at least be protected by supplying them with carcasses from excess elk within the park, by curtailing the destruction of habitat by clearcutting National Forests surrounding the Park, and by preventing hunting until their numbers have recovered sufficiently to withstand these pressures.

(b) This paragraph authorizes the Secretary of Agriculture to carry the full cost, or any portion thereof, of any program which is considered desirable to carry out the purposes of this Act and which involves installation of any facility or program on private lands. Any such program must be directed at assisting private land owners to take actions consistent with the preservation and protection of endangered species where the landowners wish to do so. The Secretary of Agriculture is also authorized to conduct research programs in order to further the purposes of this Act. Any such research may be carried on jointly by the appropriate Secretary and the Secretary of Agriculture.

INTERNATIONAL COOPERATION

Sec. 8. (a) This paragraph authorizes the use of counterpart funds in foreign countries, where those countries are agreeable, to provide assistance in the development and management of programs which the Secretary finds to be important to endangered species. The President, under the appropriate provision of law, is authorized to do anything that is mutually considered as desirable. There is a restriction on the use of counterpart funds, however, which indicates that in a case where counterpart funds are available, they will be used in preference to those authorized under section 15 of this Act.

(b) The Secretary is authorized and directed to encourage foreign countries to develop adequate programs for the protection of endangered species, to encourage the development of bilateral and multilateral agreements for the protection of endangered species and to encourage foreign persons who take endangerd species of plants or animals for importation to use such practices as will encourage appropriate conservation practices and protection of endangered species.

(c) After consultation with the Secretary of State, the Secretary is authorized to use Federal employees to develop personnel programs relating to endangered species, and to provide training for foreign personnel in this country or elsewhere, in the management of endangered species.

(d) The Secretary is authorized, in cooperation with the Secretary of the Treasury, to develop programs for law enforcement and research, as necessary to carry out the purposes of the Act.

(e) This section authorizes the establishment of appropriate management and scientific authorities as required pursuant to the terms of the International Convention, when it becomes effective. It also requires appropriate action under the Convention on Nature Protection in the Western Hemisphere. It is anticipated that the agencies designated under this section will perform appropriate functions necessary to assure effective administration of the responsibilities of the United States under the Convention and to advise the public of export and import controls and the species subject to controls under the Convention.

PROHIBITED ACTS

Sec. 9. (a) Subparagraphs (1) through (5) of this paragraph spell out a number of activities which are specifically prohibited with respect to endangered (not threatened) species for persons subject to the jurisdiction of the United States. It includes, in the broadest possible terms, restrictions on the taking, importation and exportation, and transportation of such species, as well as other specified acts. Concurrent jurisdiction with states is provided for, where the taking of such species violates the provisions of an existing cooperative agreement. Subparagraph (6) makes it unlawful for any person to violate any regulation promulgated by the Secretary with respect to a threatened species. In this respect the Secretary is given authority to prohibit activities with respect to threatened species which have specifically been prohibited with respect to endangered species.

(b) It is unlawful for any person subject to the jurisdiction of the United States to do anything which would result in a violation of the international Convention. The reference to the definitions in the Convention is required because a number of terms used in that Convention, such as "specimen" and "introduction from the sea", were defined with special care in that Convention and have highly specific meanings. This paragraph provides that an export permit covering the shipment of nonendangered species on Appendix II of the Convention will be presumed to be valid and issued in good faith, unless the Secretary has reliable evidence to offset the presumption of validity. In all other respects, of course, the requirements and regulations of the Act, including the requirement that such goods be brought in through designated ports of entry, accompanied by appropriate documentation, must be followed by the importer; the purpose of paragraph (b) (2) is to allow the Secretary to look behind an export permit only where he has evidence that it does not correctly reflect the situation in the country in which the animal or plant was originally taken, or that the permit itself is not valid.

(c) It is illegal to engage in business as an importer or exporter of fish or wildlife without a permit; this category includes zones, brokers, forwarders and taxidermists. The only exception to this requirement is provided in the case of businessmen dealing in nonendangered and nonthreatened species of shellfish and fish which are imported for commercial purposes or taken in U.S. waters or on the high seas for recreational purposes. Permit holders or licensees under this section are required to keep adequate records, permit inspection of these records and their premises by the Secretary, and file all required reports. The Secretary is also authorized to prescribe regulations under which these requirements are to be carried out.

(d) It is illegal for anyone (except in the specified conditions of the proviso), whether a businessman or otherwise, to fail to file declarations or reports required by the Secretary in conjunction with the enforcement of this Act or of the Convention. The filing of a false or misleading report would be a violation of this section.

The subsection is designed to provide the Secretary with the information which he must have on the wildlife shipments which presently cross U.S. borders in order for this country to participate effectively in the Convention, which requires a workable system of worldwide information in this area.

(e) This paragraph makes it illegal for anyone (except in the specified conditions of the proviso), whether a businessman or otherwise, to bring in fish or wildlife or plants in any port other than one designated by the Secretary. The requirement can we waived or modified at the discretion of the Secretary. Ports already designated under existing law will continue to be designated in the future, except as specifically changed.

(f) It is illegal to conspire to commit, or to attempt to commit, a violation of the Act.

EXCEPTIONS

SEC. 10. (a) The Secretary is allowed to issue permits for actions otherwise prohibited for scientific purposes or for the purpose of enhancing the propagation or survival of the species affected. The restrictions upon the discretion of the Secretary lie in the requirements of subsection (c), as later described. Any such activities to encourage propagation or survival may take place in captivity, in a controlled habitat or even in an uncontrolled habitat so long as this is found to provide the most practicable and realistic opportunity to encourage the development of the species concerned. They might even, in extraordinary circumstances, include the power to cull excess members of a species where the carrying capacity of its environment is in danger of being overwhelmed.

(b) This paragraph provides the so-called "hardship exemption", authorizing the Secretary to exempt for a period of not to exceed one year from the date that a species is first proposed for inclusion on the list persons who can show that the listing of that species will create an undue economic hardship for them. Like subsection (a), exemptions to be provided under this subsection would be subject to the overall policy requirements of subsection (c) of this section. The paragraph does not prevent or forestall existing hardship exemptions under the Act; it does, however, require that no economic hardship exemption be granted covering an animal which is on Appendix I of the Convention if the use of the animal is for primarily commercial purposes. The Secretary is authorized to obtain any information necessary for him to decide whether or not the issuance of such an exemption is justified, and any information so received is to be a matter of public record. If the applicant concludes that this will result in the public release of information which he would prefer to remain private, he may of course, decide not to submit his application or to attempt to persuade the Secretary not to require that information.

(c) This paragraph prescribes the circumstances under which the Secretary may grant exemptions under subsections (a) and (b) of this section. It provides overall policy guidance, requiring that the Secretary find and publish his finding that the exemption application was applied for in good faith (and is not for the purpose of stockpiling animals or products), is not to the disadvantage of the species, and will be consistent with the purposes and policies stated in Section 2.

The effect of this subsection is to limit substantially the number of exemptions that may be granted under the act, but given that these exemptions apply to species which are in danger of extinction, the restrictions imposed by this paragraph seem entirely reasonable.

(d) This subsection extends the exception provided in the Marine Mammal Protection Act of 1972 (P.L. 92-522) regarding taking of endangered species by Alaskan natives. Under that Act, certain types of taking of endangered species of animals are permitted subject to the overriding power of the Secretary to intervene and restrict or prohibit further taking in the interests of protecting the species or stocks of those animals. The same powers of intervention are thus preserved by this Act. While any such taking would not be a violation of either the Marine Mammal Protection Act or this Act, the taking would still be subject to whatever stricter state regulations apply to the taking of the animals concerned.

PENALTIES AND ENFORCEMENT

Sec. 11. (a) Civil penalties are provided for anyone who violates any provision of the Act, or permits or certificates issued pursuant to the Act, or regulations.

All violations prescribed by statute, including those of Section 9(a)(6), are punishable by a $10,000 fine, as are all violations of any permit or certificate. It should be noted, however, that only violations of 9(a)(6) regulations are punishable to this extent insofar as they implement or parallel restrictions specifically enumerated in section 9(a)(1–5), 9(b), 9(c), 9(e) or 9(f). Violations of any other regulations, if knowingly committed, are punishable by a $5,000 penalty.

The subsection is subject to the requirement that violators be given an opportunity for a hearing and requires the Secretary to sue in a Federal district court to collect any penalties assessed. Penalties may be remitted or mitigated by the Secretary upon finding of proper cause. Hearings by the Secretary are required to be conducted subject to the existing adjudicatory hearing requirements of the Administrative Procedures Act and the Secretary is given authority to issue subpoenas and other process necessary to determine the facts of the case.

(b) Criminal penalties are also provided for any acts which are knowingly taken and which violate the provisions of the Act, or of any permit or certificate. Violation of certain regulations will carry the full penalty, as in the case of civil penalties, and violations of other regulations will carry lesser penalties. The section incorporates a "finders' fee provision", authorizing payment of a portion of the criminal fines to any person who furnishes information, not in the course of his Federal or state employment, which leads to conviction under this subsection.

The subsection also authorizes Federal officials to terminate or modify any outstanding Federal grazing lease or other agreement allowing the use of Federal lands upon conviction of a violation under this Act. It makes mandatory the cancellation of any Federal fish or game permit in similar circumstances for up to one year from the date of conviction.

(c) Jurisdiction over offenses and violations under this Act is vested in United States District Courts. Under the principle of concurrent jurisdiction, set out earlier, state courts may also be vested with proper jurisdiction in some cases.

(d) This paragraph authorizes Federal agencies to issue enforcement regulations and allows the use of other Federal personnel and facilities, with or without reimbursement. It authorizes U.S. judges and magistrates to issue warrants for violations of the Act, and allows authorized agents to open packages, serve warrants, and sieze and hold goods pending their disposal of the case in the courts. If the Secretary permits it, bonds or other sureties may be posted to permit recovery of property so seized.

This subsection changes existing law by providing an *in rem* procedure under which the Secretary may seek forfeiture of the goods at any time, or in lieu of a civil penalty. This is required, for example, by cases in which no consignee could be found within the United States, or the item was received as a "gift", without constituting a formal importation.

The section provides for forfeiture of illegal goods, which may, but need not, take place in conjunction with civil or criminal proceedings. It is expected that goods properly seized and forfeited would not be returned if the Secretary concludes that the Act has been violated. Goods other than the prohibited fish or wildlife may also be forfeited, in the discretion of the court, upon a criminal conviction for violation of the Act or any regulations under the Act. It also preserves existing customs laws regarding seizures.

(e) The appropriate agency heads are authorized to promulgate enforcement regulations and to charge reasonable fees for expenses properly incurred under the Act. Any such fees are to be covered into the General Treasury to the credit of the appropriation covering such activity.

(f) This subsection authorizes citizen actions to enforce the provisions of the Act. It allows any person, including a Federal official, to seek remedies involving injunctive relief for violations or potential violations of the Act. The language is parallel to that contained in the recent Marine Protection, Research and Sanctuaries Act of 1972, and is to be interpreted in the same fashion.

(g) The Secretaries are directed to coordinate their activities with those of the Secretary of Agriculture to provide for enforcement of the Animal Quarantine and Tariff Acts. In no respect is the authority so provided intended to limit the authorities otherwise available to the Secretary of Agriculture.

(h) The Act specifically disclaims any intent to interfere with the responsibilities of the Secretary under the Tariff Act relating to importation of contraband animals, which may or may not also be endangered.

ENDANGERED PLANTS

Sec. 12. This section authorizes the Secretary of the Smithsonian, together with any other interested agencies of the state or Federal government, public or private, to review plant species which are or may become endangered or threatened and possible regulatory programs. The results of this study are to be communicated to the Congress at the time, and we will then be in a position to consider the necessity for further amendments to this legislation.

CONFORMING AMENDMENTS

Sec. 13. For the most part, the amendments in this section simply conform existing laws to the provisions of this Act, as reported. The Committee has made a conscientious effort to find all references to the existing laws, and to correct them to refer to the new Endangered and Threatened Species Act of 1973. It is presumed that any references to older legislation which have not been so conformed would continue to refer to this Act.

Subsection (d) of this section handles a housekeeping change which was brought to the attention of the Committee after enactment of PL 92–534 last year, dealing with the acquisition of lands in national conservation and recreation areas. As amended, the legislation will permit the acquisition of lands within the boundaries of such areas, as well as those adjacent to them.

As to the recent Marine Mammal Protection Act of 1972, a number of changes are made to conform the reference to this Act. There is no intention whatever to repeal any portion of that Act, and it is intended that the more restrictive provisions of each law will prevail, to the extent that any conflict may later appear.

REPEALER

Sec. 14. This section repeals the existing 1966 and 1969 endangered species acts, which have been superseded by this bill.

AUTHORIZATIONS

Sec. 15. This section authorizes certain sums to the Interior and Commerce Departments for the current and next two fiscal years. The sums authorized are in line with the agency projections of program needs for the years in question, and provide a total of $27.5 million for these three years.

EFFECTIVE DATE

Sec. 16. The effective date of the legislation is the date of its enactment.

Cost of the Legislation

In the event that this legislation is enacted into law, the Committee estimates the maximum costs to the Federal Government, on the basis of information supplied by the Executive Branch, to be as follows:

> The Departments of the Interior and Commerce estimate their three year costs to be $69.9 million, as represented by the following table:

[In millions of dollars]

	Fiscal year—		
	1974	1975	1976
Habitat acquisition (sec. 5b): Interior	1.4	8.5	12.5
State grants-in-aid (sec. 6): Interior		10.0	10.0
Program costs (sec. 15):			
Interior	6.0	8.0	10.0
Commerce		1.5	2.0
Total	7.4	28.0	34.5

It is to be noted the Department of the Interior anticipates habitat acquisition costs will be provided by the Land and Water Conservation Fund. The Smithsonian Institution and the Department of Agriculture anticipate any cost to their agencies in implementing the legislation will be borne by existing program authorizations.

After reviewing the foregoing estimate of costs with respect to this legislation, the Committee has concluded that these costs are reasonable and that the costs incurred in carrying out this legislation will be consistent with those estimates.

DEPARTMENTAL REPORTS

The departmental reports on H.R. 37, H.R. 4758, and similar and identical bills, upon which the hearings were held, along with Executive Communication No. 442 follow herewith:

[Executive Communication No. 442]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 15, 1973.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There is enclosed a draft bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

We recommend that this bill, a part of the environmental program announced today by President Nixon, in his Environmental and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration, and that it be enacted.

This proposal addresses the need to identify those species or subspecies which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. We are convinced that it is far more sound to take the steps necessary to keep a species or subspecies from becoming endangered than to attempt to save it after it has reached that critical point. Therefore, the bill defines "endangered" (Section 2 (c)(1) as meaning any species or subspecies which is either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. To assure protection of all endangered species commensurate with the threat to their continued existence, we propose to (1) remove the current ceiling imposed by law on acquisition of essential wildlife habitat; (2) prohibit unauthorized import or export, taking, possession, sale, delivery, and transport of species presently threatened with extinction; (3) clarify authorities pertaining to warrantless searches and forfeiture of seized property; and, (4) allow importation at other than designated ports of entry "in the interest of health or safety of fish and wildlife."

The bill follows closely the precedent established by the Congress in 1966 and1967, when it enacted the first legislation to provide protection for fish and wildlife determined to be threatened with extinction in the United States abroad. This proposal retains those provisions of the earlier Acts which laid the foundation for this Department's effort to protect endanger species and adds to them the authorities which, as demonstrated by experience, are needed to cope with a continuing decimation of the world's wildlife resources. It provides authority for a new program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970.

We urge the Congress to take this further step forward for the protection of our diminishing wildlife resources. The Office of Management and Budget has advised that this legislation is in accord with the President's program.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

Enclosure.

(The text of the bill enclosed with this executive communication was introduced as H.R. 4758)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 23, 1973.

Hon. LEONOR (MRS. JOHN B.) SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: Your Committee has requested the views of this Department on H.R. 37, a bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes," and H.R. 2169, a bill "To implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and for other purposes." We note that there is also pending before your Committee H.R. 4758, the Administration's proposed bill, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes." In addition our comments will be directed to H.R. 3310, H.R. 3691 and H.R. 3795, bills identical to H.R. 37 and similar bills H.R. 470, H.R. 471, H.R. 1461, H.R. 1511, H.R. 2669 and H.R. 4755.

We recommend the enactment of H.R. 4758, the Administration's proposed "Endangered Species Conservation Act of 1973."

Each of these bills, except H.R. 2169, would, in some way, amend the existing laws regarding the protection and conservation of endangered species of fish and wildlife. Pursuant to these earlier laws, which have been codified as the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa–668cc; 668cc–1 through 668cc–5), and related Acts, the Secretary of the Interior has authority to promulgate separate lists of native species threatened with extinction and of foreign species threatened with worldwide extinction; to regulate the interstate transportation of native species taken contrary to State laws, and to restrict the importation of foreign species which he determines to be threatened with worldwide extinction. In addition, the Secretary has exercised authority to acquire endangered species habitat within funding limits established by Congress.

The Bureau of Sport Fisheries and Wildlife of this Department has made significant progress under existing authorities, and it can be said with assurance that enactment of endangered species legislation was a milestone in the Nation's attempt to preserve its natural environment. There exists no precise measure of our success, due primarily to a lack of technical information. Nearly 400 species are currently listed as endangered, either in the United States or worldwide, and there are example or species which, thought once threatened with extinction, are now thought to have been rescued from ultimate destruction. The threat remains, however, and can be expected to grow in intensity as habitat is converted to human use and the environment is despoiled.

These bills would, among other things, expand the existing program for the conservation and protection of fish and wildlife resources by providing earlier identification of threatened species, authorizing necessary protective measures, prohibiting the taking of endangered species, and expanding the prohibition against trafficking in such species. Under the bills, the development and administration of the new program would be the joint responsibility of the Department of the Interior and the Department of Commerce, pursuant to the allocation of responsibilities by Reorganization Plan No. 4 of 1970.

For the sake of convenience we will summarize the provisions of H.R. 4758 and explain the most significant differences between it and the other bills.

H.R. 4758 addresses the need to identify those species or subspecies which, though not yet threatened with extinction, are likely within the foreseeable future to become so threatened. In so doing, it provides the means for taking the steps necessary to keep a species or subspecies from becoming endangered rather than attempting to have it after it has reached that critical point. Therefore, the bill defines "endangered" (Section 2(c)(1)) as meaning any species or subspecies which is either presently threatened with extinction or likely within the foreseeable future to become threatened with extinction. To assure protection of all endangered species commensurate with the threat to their continued existence, H.R. 4758 would (1) remove the current ceiling imposed by law on acquisition of essential wildlife habitat; (2) prohibit unauthorized import or export, taking, possession, sale, delivery, and transport of species presently threatened with extinction; (3) clarify authorities pertaining to warrantless searches and forfeiture of seized property, and (4) allow importation at other than designated ports of entry "in the interest of health or safety of fish and wildlife." H.R. 4758 also provides authority for this program to be administered jointly by this Department and the Department of Commerce, pursuant to the allocation of responsibilities established by Reorganization Plan No. 4 of 1970. For those species or subspecies likely within the foreseeable future to become threatened with extinction, H.R. 4758 would provide discretionary authority to the Secretary to regulate the import, taking, and interstate transportation of those animals. The type and degree of control exercised in this latter instance would depend on the circumstances of each species and could include a complete or partial ban if deemed appropriate.

H.R. 37, and the other bills identical to it, are in many instances similar to H.R. 4758. However, while we support the general purposes of these bills we prefer H.R. 4758 for the following reasons:

1. We believe it desirable to include, within the definition of "take" the terms "pursue," "shoot," "wound," "trap," and "collect."

2. We believe that the separate definitions of "fish" and "wildlife" could raise ambiguities as to what animals are included under each term. Another problem is that the definition of "wildlife" in H.R. 37 includes the nebulous reference to any "other animal". It is uncertain as to what this term is meant to include. Consequently, we believe the term used in H.R. 4758, "fish and/or wildlife" defined to mean "any wild animals, whether or not raised in captivity, including without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, or crustacean, including any part, product, egg, or offspring thereof, or the dead body or parts thereof", is more appropriate.

3. Under Subsection 4(b) of these bills, we anticipate a potential legal problem relating to the phrase "not less than annually". This language would appear to require the Secretary to establish a new list or reestablish the existing list, assuming that no changes were appropriate at that time, at least once every year. It is not inconceivable then, that if, through some circumstances, the Secretary failed to republish a list for which no changes were appropriate, a defendant in a civil or criminal proceeding under this Act would claim the defense that the list had legally lapsed. This problem would be avoided under H.R. 4758 which stipulates that the Secretary publish a list and allow him to revise such list "from time to time".

4. While we concur with the prohibition of acts specified under Subsection 7(a) of H.R. 37 applying to species or subspecies presently threatened, and those referred to under Subsection 7(b) applying to species or subspecies, likely within the foreseeable future to become threatened, we believe that certain additional acts should be specifically prohibited. Accordingly, we favor the more comprehensive language in Sections 4(a) and 4(b), of H.R. 4758.

5. Within the definitions section of H.R. 37, Section 3, we note the inclusion of the term "Federal lands". Considering that the prohibitions apply to taking "within the United States", we do not see the need for a separate definition of "Federal lands."

6. We note that under Subsection 10(a)(2) of H.R. 37, the Secretary is directed to convene, through the Secretary of State, an international ministerial meeting for the purpose of signing an international convention on the conservation of endangered species. Since an international meeting, recently held in Washington, D.C., resulted in agreement on a draft treaty prepared in conjunction with the State Department, we do not believe such a provision is appropriate.

7. We do not believe that Section 11 of these bills is necessary or desirable since the Smithsonian Institution already has authority to conduct this kind of a review and the authorization of a specific appropriation merely serves to put a ceiling on the amount of funds to be expended for this purpose. The recently concluded "Convention on International Trade on Endangered Species of Wild Fauna and Flora", signed on March 3, 1973, in Washington, D.C., recognizes the critical role of flora in our total ecosystem. This Department, the Departments of Commerce and Agriculture, and the Smithsonian Institution are cooperating to develop a conservation program to preserve endangered flora pursuant to that Convention.

The above comments on H.R. 37, and the other bills identical to it, also pertain to H.R. 470, H.R. 471, and H.R. 2669, and to H.R. 1511 and H.R. 2735, H.R. 1461 and H.R. 4755, identical bills, are different from H.R. 37. However, these bills are identical to the endangered species bill developed last year and introduced in the 92nd Congress as H.R. 13081. While H.R. 1461 and H.R. 4755 are, therefore, quite similar to the current Administration proposal discussed above, H.R. 4758, we believe that the refinements make H.R. 4758 preferable to the earlier version. Consequently, we recommend against enactment of either H.R. 1461 or H.R. 4755.

H.R. 2169 would implement the Convention on Nature Protection and Wildlife Preservation in the eWstern Hemisphere and amend the original 1966 Endangered Species Act. This bill would prohibit any person within any place subject to the jurisdiction of the United States from hunting, capturing, killing, taking, transporting, selling, or purchasing any fish or wildlife listed in the Annex to the Convention. H.R. 2169 also provides that in submitting the list of species for the Annex, the Secretary of the Interior shall include the species found by him to be rare or endangered under the terms of the 1966 Endangered Species Act. While this Department subscribes to the objectives of H.R. 2169, we believe that it offers only a partial solution to the problems associated with the preservation and conservation of endangered wildlife. We therefore, recommend the enactment of H.R. 4758 as a comprehensive approach to the protection, preservation and conservation of these animals.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of H.R. 4758 would be in accord with the program of the President.

Sincerely yours,

DOUGLAS P. WHEELER,
Acting Assistant Secretary of the Interior.

DEPARTMENT OF STATE,
Washington, D.C., March 23, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Thank you for your letters of February 7, March 5 and March 7, 1973, affording this Department the opportunity to comment on H.R. 37, H.R. 2735, H.R. 4755 and H.R. 4758, bills to provide for the conservation, protection and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

The Department favors the enactment of H.R. 4758, which was transmitted to the Congress in conjunction with the President's State of the Union Message on Natural Resources and Environment of February 15, 1973. This bill has the following advantages over the other bills cited above.

Sec. 10(a)(2) of H.R. 37 and Section 10(a)(1) of H.R. 2735 call for the Secretary through the Secretary of State to convene an international meeting on fish and wildlife. The meeting took place in February; H.R. 4758 in effect takes note of this by not calling for it to be convened.

Sec. 7 of H.R. 37 and H.R. 2735 and Sec. 5 of H.R. 4755 prohibit the taking of endangered species upon the high seas. This prohibition should be limited to persons subject to the jurisdiction of the United States and in H.R. 4758 it is so limited.

The last sentence of Section 5(f) in both HR 37 and HR 2735 states: "The Secretary is also authorized to conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the obligations imposed upon him by this Act." Investigations and research abroad may only be undertaken with the cooperation and specific consent of the interested sovereign nation. Furthermore, activities of U.S. representatives abroad must be coordinated in the light of United States foreign policy objectives. The Administration's bill would solve this problem by including in Section 7, which covers the same subject, the phrase "in consultation with the Department of State."

There is an additional problem in connection with HR 37. Section 9(g) would require any person who engages to any extent in business as an importer of fish and wildlife to register with the Secretary of the Treasury and to keep detailed records of each import of fish and wildlife and of the subsequent disposition made of such imports. The records presumably would have to cover all imports of commercial fish and fish products, many leather articles, such as shoes and bags, and clothing made of or trimmed with fur or leather. In the view of the Department of State, the detailed records required would place a costly burden on normal commercial trade. Since this requirement is only applicable to importers and not to domestic wholesalers, trappers, or manufacturers dealing in wildlife specimens, it could be considered inconsistent with Article III of the General Agreement on Tariffs and Trade. This article requires that imported products shall be accorded treatment no less favorable than that accorded to "like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

The difficulties outlined above are eased in the Administration bill, HR 4758. Section 6(e) of this bill covers the essentials of the above paragraph by allowing the Secretary to require persons importing or exporting fish and wildlife to file declarations with information which he deems necessary. However, the discretionary powers would limit the burdens which would be placed on normal commercial trade.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of HR 4758 would be in accord with the program of the President.

Sincerely,

MARSHALL WRIGHT,
Acting Assistant Secretary
for Congressional Relations.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 23, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marines and Fisheries,
House of Representatives.

DEAR MADAM CHAIRMAN: This is in response to your request for a report on H.R. 37, H.R. 2735, and H.R. 4758 bills "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The Department of Agriculture recommends that H.R. 4758, the Administration's proposed "Endangered Species Conservation Act of 1973", be enacted in lieu of H.R. 37 or H.R. 2735.

In general, the bills follow closely the provisions of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668aa–668cc; 668cc–1 through 668cc–5). They would strengthen the earlier legislation in part by broadening the definition of endangered species to include species or subspecies of fish or wildlife that may within the foreseeable future be likely to become threatened with extinction; and by prohibiting the exporting, taking, possession, sale, and interstate transportation of endangered species.

The Department of Agriculture strongly supports the objectives of the bills to protect endangered fish and wildlife. In furtherance of the existing Endangered Species Conservation Act, the Forest Service of this Department is continuing to develop management plans that would protect and enhance identified areas of endangered species habitat located on lands within the National Forest System.

Although many of the provisions of the three bills are quite similar, we recommend that H.R. 4758 be enacted. We believe the penalties and enforcement provisions of H.R. 4758 are more comprehensive and stronger than the related provisions of the other two bills. Further, we believe that it would not be appropriate for the Secretary of Agriculture to initiate a program of direct assistance to private landowners as provided by section 10(c) of H.R. 37 and H.R. 2735. If a need to assist private landowners is identified, we believe such programs could be better accomplished by strengthening the role of the States in this area.

The Office of Management and Budget advises that there is no objection to the presentation of this report, and that enactment of H.R. 4758 would be in accord with the President's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

DEPARTMENT OF JUSTICE,
Washington, D.C., June 6, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request for the views of the Department of Justice on several bills before your Committee regarding "Endangered Species" namely H.R. 4758, H.R. 37, H.R. 2735 and H.R. 4755.

The Department is of the opinion that the Administration's bill H.R. 4758 incorporates all of the significant issues of the other three bills. H.R. 4758 "provides for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction . . ."

We would strongly urge prompt consideration of this legislation which is consistent with the President's message on Natural Resources and the Environment (February 15, 1973).

The Office of Management and Budget has advised that there is no objection to the submission of this report, and that enactment of H.R. 4758 would be in accord with the President's program.

Sincerely,

MIKE MCKEVITT,
Assistant Attorney General.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., March 23, 1973.

Hon. LEONOR K SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 37, H.R. 2735, H.R. 4755 and H.R. 4758, similar bills, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The President, in his State of the Union Message of February 15, 1973, on Natural Resources and the Environment, stated that the limited scope of existing laws requires new authority to identify and protect endangered species before they are so depleted that it is too late and that he would ask the 93rd Congress to direct its attention to this problem. The Administration's proposal is contained in H.R. 4758.

In view of the foregoing, the Department recommends the enactment of H.R. 4758 in lieu of further consideration of H.R. 37, H.R. 2735 and H.R. 4755.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that enactment of H.R. 4758 would be in accord with the program of the President.

Sincerely yours,

DONALD L. E. RITGER,
Acting General Counsel.

SMITHSONIAN INSTITUTION,
Washington, D.C., April 23, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: Thank you for the opportunity to comment on H.R. 37, a bill "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes."

H.R. 37 is substantially the same as H.R. 4758, the latter of which the Smithsonian Institution already has reported on favorably to your Committee. For the reasons set forth in that Report, the Institution endorses the purposes and objectives of H.R. 37, which it is believed will improve substantially the ability of the United States to protect and preserve threatened species or subspecies of fish and wildlife.

The principal provision in H.R. 37 which deviates from H.R. 4758, and in which the Smithsonian Institution has a direct interest, is Section 11, entitled "Endangered Flora." This section provides that:

"The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species and subspecies of endangered plants, trees, and other flora, and (2) methods of providing adequate protection to such species and subspecies, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review. For the purposes of this section, there is authorized to be appropriated $250,000."

It is believed that the Smithsonian Institution already has general authority to accomplish these objectives without specific legislation. Also, it may be of interest to the Committee to know that the Smithsonian Institution has been conducting, on a limited basis, research on endangered flora with a view to compiling a list of domestically and internationally endangered flora.

The Smithsonian Institution hopes that the Committee will act favorably on legislation to give greater protection throughout the world to species threatened with extinction, or which are likely within the foreseeable future to become so threatened. The principles embodied in the pending legislation demonstrate the increased awareness of the American public in the need to treat the future existence of other living creatures, which so often depends on human decisions, with care, respect, and foresight.

The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress.

Sincerely yours,

S. Dillon Ripley, *Secretary.*

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 4(c) OF THE ACT OF OCTOBER 15, 1966

Sec. 4. (a) * * *

* * * * * * *

(c) No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law. **[**Nothing**]** *With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing* in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife **[**, including endangered species thereof,**]** on lands not within the System. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System.

SECTION 10(a) OF THE MIGRATORY BIRD CONSERVATION ACT

SEC. 10. (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada, and other species of wildlife found thereon, including species that are **[**threatened with extinction**]** *listed pursuant to section 4 of the Endangered and Threatened Species Act of 1973 as endangered species or threatend species*, and to restore or develop adequate wildlife habitat.

SECTION 401(a) OF THE ACT OF JUNE 15, 1935

SEC. 401. (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United

States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are [threatened with extinction] *listed pursuant to section 4 of the Endangered and Threatened Species Act of 1973 as endangered species or threatened species*, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

SECTION 7(a)(1) OF THE LAND AND WATER CONSERVATION FUND ACT OF 1965

ALLOCATION OF MONEYS FOR FEDERAL PURPOSES

SEC. 7. (a) Moneys appropriated from the fund for Federal purposes shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President to the following purposes and subpurposes:

(1) For the acquisition for land, waters, or interests in land or waters as follows:

NATIONAL PARK SYSTEM; RECREATION AREAS.—Within the exterior boundaries of areas of the national park system now or hereafter authorized or established and of areas now or hereafter authorized to be administered by the Secretary of the Interior for outdoor recreation purposes.

NATIONAL FOREST SYSTEM.—Inholdings within (a) wilderness areas of the National Forest System, and (b) other areas of national forests as the boundaries of those forests exist on the effective date of this Act which other areas are primarily of value for outdoor recreation purposes: *Provided*, That lands outside of but adjacent to an existing national forest boundary, not to exceed five hundred acres in the case of any one forest, which would comprise an integral part of a forest recreational management area may also be acquired with moneys appropriated from this fund: *Provided further*, That not more than 15 per centum of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.

[THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction.]

ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered and Threatened Species Conservation Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered species of fish or wildlife or plants.

RECREATION AT REFUGES.—For the incidental recreation purposes of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k–1); and

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SECTION 2 OF THE ACT OF SEPTEMBER 28, 1962

Sec. 2. [The Secretary is authorized to acquire areas of land which are suitable for—

[(1) fish and wildlife-oriented recreational development, or

[(2) the protection of natural resources,

and are adjacent to the said conservation areas; except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps.] *The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—*

(1) incidental fish and wildlife-oriented recreational development,

(2) the protection of natural resources,

(3) the protection of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973, or

(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section,

and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps. Lands acquired pursuant to this section shall become a part of the particular conservation area to which they are adjacent.

THE MARINE MAMMAL PROTECTION ACT OF 1972

* * * * * * *

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "depletion" or "depleted" means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered *and* Threatened Species Conservation Act of [1969] *1973*; or

(C) is below the optimum carrying capacity for the species or stock within its environment.

* * * * * * *

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal products may be imported into the United States except in the following cases:

(1) Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if—

(A) the taking proposed in the application for any such permit, or

(B) the importation proposed to be made,

is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 2 of this Act. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.

* * * * * * *

(3) (A) * * *

(B) Except for scientific research purposes as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which is classified as belonging to an endangered species *or threatened species* pursuant to the Endangered *and Threatened* Species Conservation Act of [1969] *1973* or has been designated by the Secretary as depleted, and no importation may be made of any mammal.

* * * * * * *

PROHIBITIONS

SEC. 102. (a) * * *

* * * * * * *

(b) Except pursuant to a permit for scientific research issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock or which has been listed as [endangered under the Endangered Species Conservation Act of 1969] *an endangered species or threatened species pursuant to the Endangered and Threatened Species Conservation Act of 1973*; or

(4) taken in a manner deemed inhumane by the Secretary.

* * * * * * *

TITLE II—MARINE MAMMAL COMMISSION

* * * * * * *

DUTIES OF COMMISSION

Sec. 202. (a) The Commission shall—

(1) * * *

* * * * * * *

(6) recommend to the Secretary of the Interior such revisions of the [Endangered Species List, authorized by the Endangered Species Conservation Act of 1969] *endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered and Threatened Species Conservation Act of 1973*, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

* * * * * * *

THE ENDANGERED SPECIES CONSERVATION ACT OF 1969 (SECTIONS 1-3 OF THE ACT OF OCTOBER 15, 1966)

[That (a) the Congress finds and declares that one of the unfortunate consequences of growth and development in the United States has been the extermination of some native species of fish and wildlife; that serious losses in other species of native wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; and that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, to conserve and protect, where practicable, the various species of native fish and wildlife, including game and nongame migratory birds, that are threatened with extinction. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species of native fish and wildlife, including migratory birds, that are threatened with extinction.

[(b) It is further declared to be the policy of Congress that the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense, together with the heads of bureaus, agencies, and services within their departments, shall seek to protect species of native fish and wildlife, including migratory birds, that are threatened with extinction, and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies, and services, shall preserve the habitats of such threatened species on lands under their jurisdiction.

[(c) A species of native fish and wildlife shall be regarded as threatened with extinction whenever the Secretary of the Interior finds, after consultation with the affected States, that its existence is endangered because its habitat is threatened with destruction, drastic modification, or severe curtailment, or because of overexploitation, disease, predation, or because of other factors, and that its survival requires assistance. In addition to consulting with the States, the Secretary shall, from time to time, seek the advice and recommendations of interested persons and organizations including, but not limited to, ornithologists, ichthyologists, ecologists, herpetologists, and mammalogists. He shall publish in the Federal Register the names of the species of native fish and wildlife found to be threatened with extinction in accordance with this paragraph.

[(d) For the purpose of sections 1 through 3 of this Act, the term 'fish and wildlife' means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean.

[SEC. 2. (a) The Secretary of the Interior shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act to carry out a program in the United States of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction.

[(b) In addition to the land acquisition authorities in such Acts, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

[(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating selected species of native fish and wildlife, including migratory birds, that are threatened with extinction. Not to exceed $5,000,000 may be appropriated annually pursuant to that Act for such purpose for any fiscal year, and the total sum appropriated for such purpose shall not exceed $15,000,000: *Provided*, That the Secretary shall, to the greatest extent possible, utilize fund from the Land and Water Conservation Fund Act of 1965 for such purpose. Such sums shall remain available until expended. The Secretary shall not use more than $2,500,000 to acquire lands, waters, or interests therein for any one area for such purpose unless authorized by Act of Congress.

[(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this Act. The Secretary shall also encourage other Federal agencies to utilize, where practicable, their authorities in furtherance of the purpose of this Act and shall consult with and assist such agencies in carrying out endangered species program. The

Secretary is authorized to acquire by purchase, donation, exchange, or otherwise any privately owned land, water, or interests therein within the boundaries of any area administered by him, for the purpose of conserving, protecting, restoring, or propagating any selected species of native fish and wildlife that are threatened with extinction and each such acquisition shall be administered in accordance with the provisions of law applicable to such area, and there is authorized to be appropriated annually for fiscal years 1970, 1971, and 1972 not to exceed $1,000,000 to carry out the provisions of this sentence.

[SEC. 3. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species of native fish and wildlife.

[(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species of native fish and wildlife. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).]

(Sections 1–6 of the Act of December 5, 1969)

[That, for the purposes of sections 2 through 5 of this Act, the term—

[(1) "Secretary" means the Secretary of the Interior;

[(2) "fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, products, egg, or offspring thereof, or the dead body or parts thereof;

[(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam: and

[(4) "person" means any individual, firm, corporation, association, or partnership.

[SEC. 2. Except as provided in section 3 of this Act, whoever imports from any foreign country into the United States any species or subspecies of fish or wildlife which the Secretary has determined, in accordance with the provisions of section 3 of this Act, to be threatened with worldwide extinction, shall be punished in accordance with the provisions of section 4 of this Act.

[SEC. 3. (a) A species or subspecies of fish or wildlife shall be deemed to be threatened with worldwide extinction whenever the Secretary determines, based on the best scientific and commercial data available to him and after consultation, in cooperation with the Secretary of State, with the foreign country or countries in which such fish or wildlife are normally found and, to the extent practicable, with interested persons and organizations and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife is, in the judgment of the Secretary, endangered due to any of the following factors: (1) the destruction, drastic modification, or severe curtailment, or the threatened destruction, drastic modification, or severe curtailment, of its habitat, or (2) its overutilization for commercial or sporting purposes, or (3) the effect on it of disease or predation, or (4) other natural or man-made factors affecting its continued existence. After making such determination, the Secretary shall promulgate and from time to time he may revise, by regulation, a list in the Federal Register of such fish or wildlife by scientific, common, and commercial name or names, together with his determination. The Secretary shall at least once every five years conduct a thorough review of any such list to determine what, if any, changes have occurred relative to the continued existence of the species or subspecies of fish or wildlife then on the list and to determine whether such fish or wildlife continue to be threatened with worldwide extinction. Upon completion of such review, he shall take appropriate action consistent with the purposes of this Act. The Secretary shall, upon the request of any interested person, also conduct such review of any particular listed species or subspecies at any other time if he finds and publishes his finding that such person has presented substantial evidence to warrant such a review.

(b) In order to minimize undue economic hardship to any person importing any species or subspecies of fish or wildlife which are determined to be threatened with worldwide extinction under this section, under any contract entered into prior to the date of publication of such determination in the Federal Register of such species or subspecies, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, shall permit such person to import such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.

[(c) The Secretary may permit, under such terms and conditions as he may prescribe, the importation of any species or subspecies of fish or wildlife listed in the Federal Register under this section for zoological, educational, and scientific purposes, and for the propagation of such fish or wildlife in captivity for preservation purposes, unless such importation is prohibited by any other Federal law or regulation.

[(d) The provisions of section 553 of title 5 of the United States Code shall apply to any regulation issued under this section.

[SEC. 4. (a) (1) Any person who violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder, or any regulation issued under subsection (d) of this section, other than a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

[(2) Any employee authorized pursuant to subsection (c) of this section to enforce the provisions of sections 2 and 3 of this Act, and any regulations or permits issued pursuant thereto or pursuant to subsection (d) of this section, shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any fish or wildlife or property or items taken, used, or possessed in connection with any violation of any such section, regulation, or permit with respect to which a civil penalty may be assessed pursuant to paragraph (1) of this subsection. Such fish, wildlife, property, or item so seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury pending disposition of proceedings by the Secretary involving the assessment of a civil penalty pursuant to paragraph (1) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit such person to post a bond or other surety satisfactory to the Secretary. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection for any nonwillful violation of any such section, regulation, or permit, such fish, wildlife, property, or item so seized may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate. The owner or consignee of any such fish, wildlife, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. Whenever any fish or wildlife or property or item is seized pursuant to this subsection, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. If, with respect to any such fish, wildlife, property, or item so seized no action is commenced in any court of competent jurisdiction to obtain the forfeiture of such fish, wildlife, property, or item within thirty days following the disposition of proceedings involving the assessment of a civil penalty, such fish, wildlife, property, or item shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

[(b) Any person who willfully violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder or any regulation issued under subsection (d) of this section shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

[(c) The provisions of sections 2 and 3 of this Act and any regulations or permits issued pursuant thereto or pursuant to subsection (d) of this section shall be enforced by either the Secretary or the Secretary of the Treasury, or both such Secretaries. Either Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency or any State agency. Any employee of the Department of the Interior or the Department of the Treasury authorized by the Secretary or the Secretary of the Treasury may, without a warrant, arrest any person who such employee has probable cause to believe is willfully violating, in his presence or view, any such section, or any regulation or permit issued thereunder, the penalty for which is provided under subsection (b) of this section, and may execute a warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of such sections, regulations or permits. An employee who has made an arrest of a person in connection with any such willful violation may search such person at the time of his arrest and seize any fish or wildlife or property or items taken, used, or possessed in connection with any such violation, or any such employee shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any such fish, wildlife, property, or item so taken, used, or possessed. Any fish or wildlife or property or item seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury or by a United States marshal pending disposition of the case by the court, commissioner, or magistrate, except that the Secretary may, in lieu thereof, permit such person to post a bond or other surety satisfactory to him. Upon conviction, any (1) fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property or items seized may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. The owner or consignee of any such fish, wildlife, property, or item so seized, shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. If no conviction results from any such alleged violation, such fish, wildlife, property or item so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section.

[(d) For the purposes of facilitating enforcement of sections 2 and 3 of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the importation of fish and wildlife, other than shellfish and fishery products imported for commercial purposes, into the United States. The importation of such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at nondesignated ports for movement to designated ports of entry. Such regulations may provide other exceptions to such prohibition if the Secretary deems it appropriate and consistent with the purposes of this subsection.

[(e) In carrying out the provisions of sections 2 through 5 of this Act, the Secretary may issue such regulations as may be appropriate.

[SEC. 5. (a) In carrying out the provisions of sections 2 and 3 of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to species and subspecies of fish or wildlife threatened with worldwide extinction, to take measures to prevent any fish or wildlife from becoming threatened with extinction, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, and propagation of fish or wildlife.

The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife and their habitat. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with worldwide extinction.

[(b) To assure the worldwide conservation of endangered species and to prevent competitive harm to affected United States industries, the Secretary, through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to June 30, 1971, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.

[(c) There are authorized to be appropriated such sums, not to exceed $200,000, as may be necessary to carry out the provisions of subsection (b) of this section, such sums to remain available until expended.

[SEC. 6. (a) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (21 U.S.C. 101 et seq., 21 U.S.C. 111, 21, U.S.C. 134 et seq.) and the Tariff Act of 1930, as amended (19 U.S.C. 1306).

[(b) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

[(c) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 527 of said Act (19 U.S.C. 1527) relating to the importation of wildlife taken, killed, possessed or exported to the United States in violation of the laws or regulations of a foreign country.]

[From the Congressional Record, Sept. 18, 1973]

House Consideration and Passage of H.R. 37, With Amendments

ENDANGERED AND THREATENED SPECIES CONSERVATION ACT OF 1973

Mr. **Dingell**. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 37) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes, as amended.

The Clerk read as follows:

H.R. 37

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Endangered and Threatened Species Conservation Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species.
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endangered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.

FINDINGS, PURPOSE, AND POLICY

Sec. 2. (a) The Congress finds and declares that one of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermination of some species or subspecies of fish, wildlife, and plants; that serious losses in species of wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico, the Migratory and Endangered Bird Treaty with Japan, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the International Convention for the Northwest Atlantic Fisheries, the International Convention for the High Seas Fisheries of the North Pacific Ocean, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and other international agreements, to conserve and protect, where practicable, the various species of fish, wildlife, and plants facing extinction; that a key to more effective protection and management of native fish and wildlife that are endangered or threatened is to encourage and assist the States in developing programs for such fish and wildlife; and that the conservation, protection, restoration, or propagation of such species will inure to the benefit of all citizens.

(b) The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, protected, or restored, to provide a program for the conservation, protection, restoration, or propagation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to protect endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed on March 3, 1973, and the appendices thereto.

(2) The term "endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range.

(3) The term "fish or wildlife" means any wild member of the animal kingdom, whether or not raised in captivity, including without limitation, any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement) amphibian, reptile, molusk, or crustacean, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(4) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(5) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(6) The term "person" means (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(7) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(8) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970: except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(9) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

(10) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(11) The term "take" means to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, pursue, hunt, shoot, wound, kill, trap, capture or collect.

(12) The term "threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(13) The term "United States", when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) The Secretary shall by regulation determine whether any fish or wildlife is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease of predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) (1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the fish or wildlife concerned is normally found or whose citizens harvest such fish or wildlife on the high seas; except that in any case in which such determinations involve native species of fish or wildlife, the Secretary shall consult with and consider the recommendations of each State concerned before adding such species to, or removing such species from, any list published pursuant to subsection (c) of this section.

(2) In determining whether or not any fish or wildlife is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such fish or wildlife, whether by predator control, protection of habitat and food supply, or other fish or wildlife conservation or management practices, within any area under the jurisdiction of any such nation or political subdivision.

(3) The Secretary shall give full consideration regarding whether or not fish or wildlife which have been designated by any foreign country, or pursuant to any international agreement, as requiring protection from unrestricted commerce are endangered species or threatened species.

(c)(1) The Secretary shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all fish or wildlife determined by him to be endangered species and a list of all fish or wildlife determined by him to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, also conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only when he finds and publishes his finding that, to his satisfaction, such person has presented substantial evidence to warrant such a review.

(3) Any list in effect on the day before the date of the enactment of this Act of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969 to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this Act, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this Act. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5, United States Code.

(d) Whenever the Secretary lists a species of fish or wildlife as an endangered species or a threatened species pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, or propagation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a) of this Act with respect to endangered species; except that with respect to native species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State.

(e) For the purpose of facilitating the enforcement of this Act, the Secretary may from time to time, by regulation, treat, to the extent he deems it advisable, any species of fish or wildlife or of any plant which is not listed pursuant to section 4 of this Act as an endangered species or threatened species, if such species so closely resembles in appearance, at the point in question, a species of fish or wildlife or plant which has been so listed that substantial difficulty is posed to enforcement personnel in attempting to differentiate between listed and unlisted species or subspecies of fish or wildlife or plants, and this difficulty poses an additional threat to an endangered species or threatened species.

(f) Section 553 of title 5, United States Code, shall apply with respect to any regulation issued pursuant to this Act.

LAND ACQUISITION

SEC. 5. (a) The Secretary shall establish and implement a program to conserve, protect, restore, or propagate (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 4 of this Act or (B) plants which are included in Appendices to the Convention. To carry out such program, the Secretary—

(1) shall utilize the land acquisition and other authority under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

SEC. 6. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperatioin shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation, protection, restoration, or propagation of endangered or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c) In furtherance of the purposes of this Act, the Secretary is authorized to enter into cooperative agreements to provide financial assistance to States, through their respective fish and wildlife agencies, which maintain or establish adequate and active programs to manage and protect endangered and threatened species. In order for any State to qualify for assistance under this subsection, the Secretary must find annually that under the State program—

(1) authority resides in the State fish and wildlife agency to manage and protect native species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(2) the State fish and wildlife agency has established acceptable management programs, consistent with the purposes and policies of this Act, for all species of fish or wildlife indigenous to the State which are deemed by the Secretary to be endangered or threatened;

(3) the State fish and wildlife agency is authorized to conduct investigations to determine the status and requirements for survival of indigenous species or subspecies of fish and wildlife;

(4) the State fish and wildlife agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for protection and management of endangered or threatened species; and

(5) provision is made in such programs for public participation in designating indigenous species or subspecies of fish or wildlife as endangered or threatened.

(d)(1) Funds appropriated annually for purposes of assistance under subsection (c) shall be available to the Secretary for allocation to the States under cooperative agreements to assist in development by States of programs for management and protection of endangered and threatened species of fish or wildlife including research, censusing, law, enforcement, and habitat acquisition or improvement. The Secretary shall make an allocation of appropriated funds to the States based on consideration of—

(A) the international obligations of the United States to protect a species;

(B) the national significance of a species found to be endangered or threatened within a State; and

(C) the potential for preventing extinction of a species and restoring such species to nonendangered or nonthreatened status.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this Act.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be de-

rived in connection with preservation and restoration of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1), enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement.

(e) Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act, but not less restrictive than the prohibitions so defined.

(g) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(h) There are hereby authorized to be appropriated for the fiscal years 1974, 1975, and 1976 such sums as may be necessary to carry out the purposes of this section.

INTERAGENCY COOPERATION

SEC. 7. (a) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purpose of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the protection of endangered species and threatened species lised pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

(b) The Secretary of Agriculture is authorized, not withstanding the provisions of any other law, to bear the full cost, or any lesser amount that he, in consultation with the Secretary, may determine desirable to accomplish the objectives of the Act, of the cost of installing any practice, measure, work of improvement, facility, or other developmental, protective, or management systems on private land, the primary purpose of which is to enable landowners to comply with the regulations, or other recommendations, of the Secretary pertaining to the conservation, protection, restoration, or propagation of such species. The Secretary of Agriculture, in carrying out the purposes of this subsection, shall utilize his authorities to conduct research and investigations into vegetative and structural methods and other methods and practices, measures, works of improvement, and facilities most appropriate or effective in the protection, control, management, or enhancement of such species. If determined desirable, the Secretary and the Secretary of Agriculture may jointly carry out such research and investigations. The Secretary may transfer to the Secretary of Agriculture such funds as may be necessary to carry out the purposes of this subsection.

INTERNATIONAL COOPERATION

SEC. 8. (a) As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistant Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into bilateral or multilateral agreements with foreign countries to provide for such protection, conservation, restoration, or propagation; and

(3) foreign persons who directly or indirectly take fish or wildlife and plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and plants and their habitat.

(c) After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife and plants; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife and plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

PROHIBITED ACTS

SEC. 9. (a) Except as provided in section 10 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species listed pursuant to section 4 of this Act;

(2) take any such species within the United States or the territorial sea of the United States, upon the high seas, or in any foreign country, except that this paragraph shall apply within any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that the taking of any such species is contrary to the law of such State;

(3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of paragraph (2);

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell or offer for sale in interstate or foreign commerce any such species; or

(6) violate any regulation promulgated by the Secretary pursuant to section 4(d) of this Act.

(b)(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention.

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied, and

(C) the applicable requirements of subsections (d) and (e) of this section have been satisfied,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(c)(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (B) are imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained a permit from the Secretary.

(2) Any person required to obtain a permit under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(d) It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (B) are imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(e)(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for commercial purposes or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(f) It is unlawful for any person subject to the jurisdiction of the United States to attempt or conspire to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

SEC. 10. (a) The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

(b)(1) If any person enters into a contract with respect to a species or subspecies of fish or wildlife or plant before the date of the publication in the Federal Register of notice of proposed listing of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of a proposed listing of the species or subspecies concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species or subspecies of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used for primarily commercial purposes.

(2) The Secretary shall publish notice in the Federal Register of each application for an exemption which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(c) The Secretary may grant exemptions under subsections (a) and (b) of this section only if he finds and publishes his finding that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(d) Any taking by an Indian, Aleut, or Eskimo of any marine mammal (as defined in section 2(5) of the Marine Mammal Protection Act of 1972) which is listed pursuant to section 4(a) of this Act as an endangered species or threatened species shall not be deemed to be in violation of this Act or any regulation issued pursuant thereto if such taking is lawful under section 101(1) of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 11. (a)(1) Any person who violates any provisions of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a) (1), (2), (3), (4), or (5), (b), (c) (other than a regulation relating to recordkeeping or filing of reports), (e), or (f) of section 9 of this Act may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. Any person who knowingly violates any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty asssessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) (1) Any person who knowingly commits an act which violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a) (1), (2), (3), (4), or (5), (b), (c) (other than a regulation relating to recordkeeping or filing of reports, (e), or (f) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who knowingly commits an act which violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both. Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed $2,500 to any person who furnishes information which leads to a conviction for a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act, or any regulation, permit or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(c) The several district courts of the United States including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) (1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as

(d) (1) The provisions of this Act and any regulations or permits issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act.

Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs law, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act, including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(f)(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable

attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(g) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

(h) Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of providing adequate protection to such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONFORMING AMENDMENTS

SEC. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered and Threatened Species Act of 1973 as endangered species or threatened species,".

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction." and inserting in lieu thereof the following:

"ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered and Threatened Species Conservation Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered species of fish or wildlife or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k–1), is amended to read as follows:

"The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the protection of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered and Threatened Species Conservation Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1960" in section 3(1)(B) thereof and inserting in lieu thereof the following "Endangered and Threatened Species Conservation Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered and Threatened Species Conservation Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endnagered and Threatened Species Conservation Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered and Threatened Species Conservation Act of 1973".

REPEALER

Sec. 14. The Endangered Species Conservation Act of 1969 (section 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6), is repealed.

AUTHORIZATION OF APPROPRIATIONS

Sec. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed $6,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 and not to exceed $10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed $1,500,000 for fiscal year 1975 and not to exceed $2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

EFFECTIVE DATE

Sec. 16. This Act shall take effect on the date of its enactment.

The Speaker. Is a second demanded?

Mr. Goodling. Mr. Speaker, I demand a second.

The Speaker. Without objection, a second will be considered as ordered.

There was no objection.

The Speaker. The gentleman from Michigan and the gentleman from Pennsylvania will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Michigan.

Mr. Dingell. Mr. Speaker, I yield to the distinguished chairman of the Committee on Merchant Marine and Fisheries, the gentlewoman from Missouri, such time as she may require.

Mrs. Sullivan. Mr. Speaker, H.R. 37 should be enacted at the earliest possible moment. It represents hours of intense committee consideration and of painstaking analysis by members and staff of the committee.

H.R. 37 revises and extends existing law—law which was proposed by this committee in earlier years. As far as it went, the earlier legislation has been valuable—even invaluable—but that law did not go far enough. That defect we hope to remedy today.

H.R. 37 comes on the heels of and implements, an important international convention, which produced a treaty providing for the protection and preservation of endangered species of plants and animals. That Convention, signed by the United States on March 3 of this year, has been submitted to the Congress for approval by the Senate and was in fact approved 5 months later. That is pretty fast action and I would hope that we can reciprocate by moving promptly on H.R. 37 today.

That additional protection for endangered species of plants and animals is necessary is indisputable. Within the past few years, it was necessary for the Department of the Interior to place eight species of whales on that list, and as many species of "spotted cats": leopards, tigers, cheetahs, et cetera.

For the most part, the principal threat to animals stems from the destruction of their habitat. The destruction may be intentional, as would be the case in clearing of fields and forests for development of resource extraction, or it may be unintentional, as in the case of the spread of pesticides beyond their target area. Whether it is intentional or not, however, the result is unfortunate for the species of animals that depend on that habitat, most of whom are already living on the edge of survival. H.R. 37 will meet this problem by providing funds for acquisition of critical habitat through the use of the land and water conservation fund. It will also enable the Department of Agriculture to cooperate with willing landowners who desire to assist in the protection of endangered species, but who are understandably unwilling to do so at excessive cost to themselves.

Another hazard to endangered species arises from those who would capture or kill them for pleasure or profit. There is no way that the Congress can make it less pleasurable for a person to take an animal, but we can certainly make it less profitable for them to do so. H.R. 37 makes it a Federal offense to violate the act or regulations published pursuant to the act, and prescribes penalties and fines of up to $20,000 for persons convicted of violations.

I should point out, however, that in our desire to create unpleasant consequences for those who violate the act, we have at the same time been very aware of the need to assure due process for anyone accused of violating the act. There are requirements for public hearings on violations, with a full opportunity for the defendants to review the evidence against them, and judicial review of decisions which are felt to be unjust.

Protection of endangered species is, as the gentleman from Michigan has already indicated, far more than a matter of esthetics. As our report on the bill points out, endangered species of plants and animals possess genetic characteristics which cannot be replaced or artificially reproduced. Once the passenger pigeon disappeared, it was gone. It will not, and cannot, ever be back. The loss of the passenger pigeon is unfortunate; it may or may not be tragic. The loss of the blue whale, on the other hand, might very well be tragic: It is possibly the largest mammal ever to have existed on the face of the Earth, and it may be the most efficient harvester of tiny marine life that exists today. In a protein-hungry world, the loss of huge potential sources of food is not an occasion which can be lightly considered.

When we threaten endangered species, we tinker with our own futures. We run risks whose magnitude we understand dimly, if at all. And we do so, for the most part, for reasons that can be described most charitably as trivial.

The purpose and intent of the bill before you is to bring into focus the costs of further endangering the plants and animals of this world. I believe that we have achieved this objective, and I support the bill strongly, and urge the support of my colleagues.

Mr. DINGELL. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I strongly urge enactment of H.R. 37, a bill to protect and encourage endangered and threatened species of fish and wildlife. This bill has been considered at length by our committee in the course of hearings during this and the previous Congress. It has been unanimously endorsed by members of our subcommittee and by members of the full Committee on Merchant Marine and Fisheries. It should be enacted today.

H.R. 37 amends and extends laws now on the books: Endangered species legislation enacted in 1966 and 1969. The existing laws are sound, as far as they go, but later events have shown that they do not go far enough. Present laws need to be made more flexible, to adapt themselves to the needs of the animals themselves and to deal with problems which did not exist until a few years ago.

There is a further need, which enactment of this legislation will meet. In March of this year, representatives of 80 nations met in Washington, in response to an earlier congressional directive, and negotiated a comprehensive convention for the protection of endangered species of plants and animals. On August 3, that convention was approved by the Senate, making this country the first to approve the convention. That it will ultimately be in force—which will take place after the 10th ratification takes place—is not questioned by anyone. Enactment of H.R. 37 will take all the steps which must be taken by this country in order to fully implement the requirements of this convention. It will place us in the forefront of the nations of the world that have expressed interest and concern for this problem.

The principal changes to be effected by passage of H.R. 37 are:

First, it extends protection to animals which may become endangered, as well as to those which are now endangered.

Second, it extends protection to animals which are in trouble in any significant portion of their range, rather than threatened, and they must now be, with worldwide extinction.

Third, it makes taking of such animals a Federal offense.

Fourth, it eliminates existing dollar ceilings on acquisition of critical habitat for such species. The present ceiling, which has been almost exhausted, is $15 million.

Fifth, it gives to the Department of Commerce the authority to manage endangered and threatened species which were transferred to them under Reorganization Plan No. 4 of 1970.

Sixth, it authorizes the use of counterpart funds for programs involving foreign countries, wherever this is appropriate.

Seventh, it authorizes and encourages the State governments to adopt and enforce laws and regulations which are consistent with those adopted by the Federal Government.

Eighth, it clarifies and extends the authority of the Department of Agriculture to assist landowners, wherever they are willing to carry out the purposes of the act.

Ninth, it directs that a study be made of the problems associated with the domestic regulation of trade in endangered species of plants.

For a more extended discussion of these and other changes which will be accomplished by passage of this bill, I invite the attention of the House to our committee's report on H.R. 37 (H. Rept. 93-412).

I would like to address for a few moments the issue of the relationship of the State and Federal governments under this act. Let me begin by putting to rest one story that has circulated from time to time: H.R. 37 does not preempt the States from enacting endangered species legislation.

Rather it declares a national policy that endangered species should be protected, and prescribes what amounts to a Federal floor to regulate the taking of such species. The States are free, just as they are now, to adopt stricter rules except to the extent that these contravene specific Federal permits or prohibitions, and to enforce these.

The bill goes further and provides a mechanism whereby the State and Federal governments may develop cooperative agreements governing the research, management and/or enforcement of regulations involving endangered or threatened species. The bill also provides for the Federal Government to contribute to the financial costs of State endangered species programs on a matching basis.

I might say that we have given this troublesome question of State and Federal relationships a great deal of thought and consideration. On the basis of this review, I am satisfied that the formula which we have developed is the best and most workable possible. I do not feel that it would be proper or desirable to place a heavy burden upon the Federal agencies to make findings that State programs are not consistent with the Federal plan before allowing that plan to be instituted. I say this principally because I am aware, as we all are, that there is considerable inertia involved in getting Government agencies and agency programs moving, and I feel that that inertia should not operate to the detriment of the species of animals with which this legislation is concerned. It makes far more sense, in my view, to provide an existing framework of rules and then to encourage the States to work cooperatively with the Federal Government in developing regulatory procedures which are consistent with that framework.

It may well be that some States have laws and regulations on their books that will allow them to negotiate and sign cooperative agreements soon after this bill becomes law. This is certainly to be encouraged, and I have received firm assurances from the agencies concerned that there will be prompt and good faith consultations at an early date to see that such agreements are rapidly developed. It is not our intention to encourage a long and dragged-out process of bureaucratic review and delay and we do not feel that H.R. 37 can be used in this fashion.

As a further inducement to the development of such agreements we have also provided for the furnishing of financial assistance to state wildlife agencies to assist their carrying out endangered species programs along the lines of the act. There is an open-ended authorization for this purpose in the act, and we have been informed that under no circumstances would the funds requested under this authorization exceed $10 million in any year.

H.R. 37 has been attacked by some as a anti-hunter bill; it has been attacked by others as a prohunter bill. In reality, it is neither—it is a bill which has been carefully drafted to encourage State and foreign governments to develop healthy stocks of animals occurring naturally within their borders. If these animals are considered valuable as trophy animals, and are not endangered, they should be regarded as a potential source of revenue to the managing agency and they should be encouraged to develop to the maximum extent compatible with the ecosystem upon which they depend.

I have been informed by the Department of the Interior that they will carefully review the status of animal stocks in foreign countries and that where nonendangered trophy animals are being managed in such a way as to assure their continued and healthy existence, no barriers will be placed upon the continued harvesting of those animals by the government. This is as it should be, because it is only in the understanding that these animals have a real and measurable value that many of the less developed countries will agree to take steps to assure their continued existence.

There is language in the legislation which incorporates a presumption of validity as to export permits issued by governments of foreign countries for animals which are not on appendix I of the international endangered species convention. This will allow persons subject to U.S. jurisdiction to accept export permits from these countries for animals which have legitimately been taken as trophies without the fear that the U.S. Government will arbitrarily refuse to accept those permits as valid.

We are assured by representatives of the Government that this is what they would do in any case, but we felt it best to spell out just what could and should be done at this time, in order to avoid future misunderstandings.

After the question of State versus Federal responsibilities, I would say that the most troublesome issue which confronted the committee was that of the best way to deal with endangered species of plants. This is a subject that has caused a considerable degree of concern among botanists, to which too little attention has been devoted in the past. Plants and plant species are particularly sensitive to variations in habitat; for the most part, the small and peculiar species of plants are that way because of particular variations in the habitat and range in which they have evolved. Our interest in preserving these species is more than esthetic: they may hold answers to questions which we have not yet learned to ask, and to lose these answers for all time involves a decision which should be made only upon careful consideration of all the facts.

We had great trouble in attempting to spell out the implications of national control over these species of plants. Internationally, the convention requires such control and it is not difficult to develop a scheme to screen plants as they enter the country; as a matter of fact, such a system is already in effect, involving inspections by agents of the Department of Agriculture. The problem area involves interstate regulation of transit, sale, and taking—and here there are no mechanisms to deal with the problem. Ultimately, the committee concluded that the best approach would be to designate and independent agency to study the problem and to report back to the Congress within a year with suggestions on the proper ways to deal with it. We selected the Smithsonian Institution as the best agency to handle this issue, principally on the basis of its independence and lack of commitment on ways of handling such questions. It is not at all unlikely that the Smithsonian will contract out for part of this study to the Agriculture Department, since that Department has much of the expertise and experience that must be developed in order to achieve an understanding of the problem. We felt, however, that since that Department has an interest in the matter, and since there are strong indications that it has made some prejudgments on the question, it would be better not to have them in charge of the study.

Mr. Speaker, the bill before the House, H.R. 37, represents considerable effort on the part of the committee, and considerable imagination in dealing with a number of complex and highly charged emotional issues. It is supported by most major conservation organizations, sportsmen's organizations, and environmental groups. The bill and the report (H. Rept. 93–412) has been available for review for over a month and I have yet to hear a whisper of opposition to its passage at the earliest opportunity. A similar bill has passed the Senate and is now on the Speaker's table. We are ready to go to conference, and hopeful that a good bill can be produced and sent to the President quite soon.

I urge that H.R. 37 be enacted.

Mr. Goodling. Mr. Speaker, I rise in support of H.R. 37, a bill designed to strengthen and improve the existing Endangered Species Act of 1969. H.R. 37, as reported out by the committee unanimously, embodies the vast majority of the proposals of the administration in H.R. 4758 and is somewhat similar to the version which passed in the other body on July 24, 1973, by a vote of 92 to 0.

The first Endangered Species Act became law in 1966 and authorized the Department of the Interior to establish a conservation program of native species threatened with extinction and expanded its authorities under the National Wildlife Refuge System.

This basic act was amended extensively in 1969 by requiring the publication of an endangered species list by prohibiting the importation of species on that list, permitting selected taking of such species for scientific and educational purposes, providing for a 1-year economic hardship exemption from the prohibitions, prohibiting the sale or purchase of such endangered species by U.S. citizens, and increasing the authorization levels for land acquisitions designed to conserve such species.

Since 1969, the lessons learned from implementation of the act on a Federal and State level have prompted the need for basic and comprehensive revisions. Experience has taught us that, under existing laws, the Federal Government was unable to adequately provide conservation and protection measures to those species which had not yet met the legal and technical definition of "extinct", but due to a variety of factors were closely approaching that population level. H.R. 37 broadens the concept of "endangered species" by vesting authority in the Secretary to list those species which are "likely within the foreseeable future to become threatened with extinction". Thus, both Federal and State authorities can regulate trade, prevent taking, and provide for habitat acquisition for those species before they actually become extinct. The bill contemplates the promulgation of two lists; one designating actually endangered or extinct species, and the other listing those which are threatened. Regulations would be promulgated to protect the species based upon their individual status. Greater flexibility is provided while at the same time additional means of protection, conservation, and management is permitted and required.

The bill also implements the recently signed Convention on International Trade in Endangered Species of Wild Fauna and Flora, requires the Smithsonian to study methods to protect endangered plants, vests agency responsibility for plants in the Department of Agriculture, establishes a closely-woven Federal/State relationship in the form of financial assistance programs to the States to assist in the management and conservation of such species, provides for cooperative agreements between the Federal Government and the States, and permits the States to enact laws which may be more restrictive than the Federal law. The measure also recognizes the important environmental role of the Department of Commerce in protecting marine plants and species, eliminates existing dollar ceilings on acquisition of critical habitat areas, and makes the taking of such species a Federal offense punishable both on a civil and criminal basis.

There is urgent need for enactment of this legislation. In the United States alone, there are 109 species listed as endangered. On the foreign list, there are over 300 species. The list of those species which are threatened but not yet actually extinct is even longer. We are dealing with the future of many species of fish and wildlife, species which are or may become extinct due to carelessness, lack of human concern, inadequate Federal, State, and local laws, and loss of habitat areas, These animals are part of our natural resources, our history and heritage, and deserve the favorable action of this body.

It is my understanding that the administration does not oppose enactment of H.R. 37, for it embodies to a great degree provisions of the administration's bill, H.R. 4758.

The SPEAKER. Does the gentleman have further requests for time?

Mr. GOODLING. Mr. Speaker, I yield 3 minutes to the gentleman from Alaska (Mr. Young).

Mr. YOUNG of Alaska. Mr. Speaker, I should like to address a question to the gentleman from Michigan primarily because he has been kind enough to come to our State and hold hearings concerning a bill that is similar to this. There is a provision in the Marine Mammal Protection Act that has caused some confusion and misunderstanding. It is due to the Department of Commerce's regulations rather than to the act itself. It was discussed at some length in the subcommittee hearings recently held at Anchorage and across the State.

I should like to ask the gentleman from Michigan if he can explain and clarify the situation as I see it today.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Michigan.

Mr. DINGELL. I would say to the gentleman that we did discuss this question in the course of our recent oversight hearings in Alaska. I do not read the Marine Mammal Protection Act as specifically requiring that subsistence hunters meet the requirements which relate to native handicrafts. I do think that the Secretary of Commerce has the authority which he needs to assure that those who claim to be subsistence hunters are in fact subsistence hunters, but those requirements cannot and should not be unreasonable.

We heard, for example, of cases in which sealskins taken from animals killed for their meat and blubber were left to rot on the beach instead of being sent to commercial tanners for processing. In my view, this makes no sense at all, and it does not conform to the Marine Mammal Protection Act.

I am, further, happy to note that the Department of Commerce has finally chosen to allow the processing of skins by tanners. This allows the processing of skins by tanners which are taken by hunters under the subsistence section of the act.

I would repeat, however, that the Secretaries of Commerce and Interior clearly have adequate authority to regulate subsistence hunters to the extent that such regulation is reasonably necessary to determine whether that hunting is taking place for subsistence purposes, and not as a subterfuge for other purposes.

If the gentleman will yield further, I will observe that there is an interrelation between this statute and the Marine Mammal Protection Act in that where actions which are allowed under the Marine Mammal Protection Act are not inconsistent with the purposes of this proposed statute, then they may be engaged in under this statute. If I recall correctly that was the amendment offered by the gentleman from Alaska.

Mr. YOUNG of Alaska. I thank the gentleman from his interest and clarification of this matter.

I want to point out that I am sure that at any hearings on this bill, if there are any questions, they will be clarified.

Mr. Speaker, in regard to this provision in section 10(d) which pertains to the taking of marine mammals by Alaska Natives in accordance with the provisions of Marine Mammals Protection Act of 1972; it has come to my attention that there has been a distinct difference between the intent of section 101(1) of the Marine Mammal Protection Act of 1972, and the interpretation of this section by the Department of Commerce as promulgated in the regulations printed in the Federal Register, volume 38, number 158, dated August 16, 1973, page 22136, section 216.23(b)(1).

Section 101(1) of the act appears to place no restriction on how the subsistence taker may use or dispose of the skins of such animals as were taken for human consumption, whereas section 216.23(b)(1) of the regulations of the Department of Commerce clearly places unintended conditions upon such use and disposition.

This issue was considered during the course of hearings recently conducted by the Subcommittee on Fisheries and Wildlife Conservation in Anchorage, Alaska.

This situation has been interpreted counter to the best interest of those people the act intended to protect, and has worked a distinct hardship upon them.

I would like to solicit further comment upon this situation by the gentleman from Michigan and I thank the gentleman from Michigan for yielding his time.

The SPEAKER. Does the gentleman from Michigan have further requests for time?

Mr. GOODLING. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. Grover).

Mr. GROVER. Mr. Speaker, I rise in support of passage of H.R. 37 and wish to associate myself with the remarks of the gentleman from Michigan (Mr. Dingell) and the gentleman from Pennsylvania (Mr. Goodling), the ranking minority members of the subcommittee.

This committee has had under consideration major revisions of the existing Endangered Species Act of 1969, as amended, since the last Congress. H.R. 37 and similar bills were introduced at the beginning of this Congress and represented the committee's efforts and findings up to that date. After extensive and lengthy hearings on the administration's bill and others, during which significant testimony and amendments were proposed by wildlife and environmental organizations, State agencies, and Federal agencies affected, the committee amended H.R. 37 accordingly.

Endangered species occupy the total spectrum of the Earth's habitats from the Arctic regions to the equator, including all the eco-types from alpine to marine. Enactment of H.R. 37 will prevent or regulate the taking of species found on the endangered and threatened lists. It will permit administrative, economic, and legal actions designed to increase the population levels of these affected species wherever they may live and restore them to a meaningful role in their and our environment.

When one realizes that half of the recorded extinctions of animals over the past 2,000 years have occurred in the most recent 50-year period, it may well be that we are too little, too late, in terms of adequate enforcement mechanisms and actual appropriations for acquisition of habitat for species preservation purposes.

There are two key elements in this bill which I would like to emphasize.

First, the United States appears to have been the determining factor in conveying and obtaining worldwide agreement on a new international convention designed to more strictly prohibit and control international trade in endangered and threatened species. This bill updates our Federal laws on the basis of our own past experience for such need and in recognition of the U.S. actions and signature to this new international convention, currently pending ratification in the other body.

Second, we have adequately protected legitimate State interests, powers, and authorities, in H.R. 37 by providing for concurrent Federal/State jurisdiction and permitting the States to enact their own, more restrictive laws, if so desired. Such fine acts as New York State's Mason Act, which prohibits the sale of some species not on the Federal list, will not be superseded by this bill to the extent that such State laws are more restrictive. It is imperative to realize, as the committee did, that the greater bulk of the enforcement capability concerning endangered species lies in the hands of the State fish and game agencies, and not the Federal Government. It is on a State level that most of the game agents are located; it is on the State level that habitat areas will be located; it is on a State level that this new Federal law will be implemented, subject to overall Federal criteria and guidelines. For those States which have taken a strong and active role in the protection and conservation of endangered species, I commend them and say that their interests and activities are well preserved. For those States which have been lax in assisting the Federal Government in meeting the national goals in prior laws on endangered species, the bill provides for State financial assistance under cooperative agreements once specified Federal criteria are met. If a cooperative program for species management does not exist in a State, the State law will be void and Federal law, rules and regulations shall apply. Thus, we have provided for a strong incentive to the States to assist the Federal Government in protecting endangered species, while, at the same time, recognizing legitimate State interests and authorities.

I know of no opposition to H.R. 37 and urge its immediate passage. As the House is aware, the other body has already taken action on this subject by passing S. 1983, with amendments, by an overwhelmingly favorable margin.

Mr. PRICE of Illinois. Mr. Speaker, the life cycle is the most natural and most inevitable of happenings. Without this cycle there could be no change, and without change the world would not be as we know it today.

This never-ending cycle, then, is a good thing for man, but unfortunately man has taken this natural situation and twisted it so that nature would not recognize it. Man has disturbed the balance of nature killing directly or indirectly hundreds of species of plants and animals, and continues to do so heedlessly. Though we see what this senseless slaughter is doing to the balance of nature—exterminating animals and destroying valuable resources—still we are doing little to voluntarily stop while there is still a chance to recoup our losses.

To protect man from himself is the main thrust of H.R. 37, the Endangered and Threatened Species Conservation Act of 1973. This bill provides for the extension of protection to animals threatened with the danger of extinction, as well as those already on the way to extinction. In addition, H.R. 37, would protect species threatened in any significant portion of their range, rather than only those threatened with worldwide destruction, and makes the taking of these animals a Federal offense.

More and more species of animals are on the way to extinction, as living conditions for them deteriorate. Pollution is driving animals out of their natural ranges, and those that have not yet been threatened by impure air and water face increasing danger from those entrepreneurs who find a profit in trapping and selling endangered animals.

In Illinois, there are numerous species of animals threatened. According to some experts, as many as 100 kinds of mammals, birds, fish, reptiles, and amphibians indigenous to the State may be considered endangered. In my district, the 23d, a species of black heron is nearly gone, in addition to many other species of birds and reptiles.

I am sure that my colleagues will agree that we cannot allow the balance of nature to continue to be upset in the way we have done.

The world is not as large as our fathers thought. We know now that there are limits even to the bounty of this Nation—and that we are rapidly approaching the bounds of those limits. If the slaughter of species continues, we will have no one to blame but ourselves, and I am sure that we here are not prepared to take the responsibility of jeopardizing future generations with a come-what-may attitude.

For these reasons I would like to take this opportunity to extend my support to the passage of H.R. 37, and to urge other Members concerned with the future of this country and the world at large to do likewise.

Mr. Leggett. Mr. Speaker, the bill we are considering today represents another step forward in our continuing efforts to preserve the natural character of the world we inhabit. Members are no doubt aware of our previous actions in this area in the 89th and 91st Congresses which have served as models for the rest of the world in wildlife protection. This previously passed legislation was also directly responsible for the very successful international meeting here in Washington which resulted in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which was signed on March 3 of this year.

While the acts of 1966 and 1969 laid the framework for an increasingly effective program for conservation of endangered species, our efforts have progressed to the point where existing law just does not provide the kind of management tools we need to act early enough to save a vanishing species. For that reason we must act here today to expand our previous efforts.

A few things in this bill should be pointed out as being worthy of more than passing interest. First, the bill addresses the fact that some States have already recognized the need for active conservation programs and have acted to meet that need. It provides that no State laws in this area will be superseded where they are more restrictive than the provisions of this bill. Furthermore, States are free at any time in the future to adopt more stringent regulations than we are enacting. What we are discussing here are minimum standards to be met in conserving endangered plant and animal resources.

Another item I would like to point out is the authorization in the bill for the use of the land and water conservation fund to acquire habitat areas of endangered species. You may recall that in his initial budget, the President asked for an appropriation of only $55,223,000 of the $338,500,000 available in the fund. I felt at that time, and I still feel, that there are legitimate, important uses for the money in that trust fund, and that we should use as much of it as possible for its intended purposes. This bill gives us a constructive outlet for those moneys, and makes much less justifiable any future attempts at a raid on this most valuable trust fund.

This farsighted legislation also contains a continued mandate for international cooperation which has proved invaluable in our efforts at conservation. It not only provides for implementation of the recently signed convention, but also authorizes and directs the Secretary to encourage international collaboration in efforts to preserve endangered species. Here again we have a chance to assure our continued leadership in this area of evergrowing concern.

There is no objection that I know of to the aims of this bill. It is the product of some very good mutual cooperation between the administration and our committee, and deserves the favorable consideration of every Member of the House.

Mr. BIAGGI. Mr. Speaker, I want to express my support for H.R. 37 and strongly urge its passage.

The need for this bill is manifest; our hearings in the Merchant Marine and Fisheries Committee clearly established the serious danger to many species in our environment.

But I also want to recommend the bill, which I cosponsored with many of my colleagues on the committee, for another reason: It represents a sound approach to tackling environmental problems. We are doing three things in this bill which are important and which should be models for future environmental legislation.

First, we are defining the problem as broadly as possible. Instead of merely protecting those species which are now in danger, we are developing a concept of protection which will have continuous force. We are including those species which, at some future date, might become endangered. This is a long range and comprehensive approach to the problem of environmental protection, and this is as it should be. The seriousness of the problem amply justifies such action.

Second, we are making the killing of animals in the protected class a Federal offense. This approach is also fundamentally important. If we are going to have effective environmental legislation we must write tough penalties for violation of the law. Again, no other approach does justice to the seriousness of the problem.

Third, the bill eliminates existing dollar ceilings on the acquisition by the Federal Government of critical habitat areas. This provision represents an important philosophy in environmental legislation—namely, that if we are serious about preserving our environment we are going to have to spend some real money. It is not a question of saying that cost is no object, but of determining that unwise cost restriction now may do damage that will later cost far more, and may not be correctable at all.

Mr. Speaker, I urge all my colleagues to support this bill. What it does is right, and the way it does it is right. And so is the time.

Mr. HARRINGTON. Mr. Speaker, by polluting the air and water, destroying natural habitats, and catering to commercial demands for items like rare furs, man unnaturally interferes in the natural process of evolution. H.R. 37, the Endangered and Threatened Species Act of 1973, is designed to rectify the harm that has been done.

The legislation changes and enlarges the scope of existing conservation law by extending protection to animals which may become endangered, as well as those now endangered; by making the killing of such animals a Federal offense; by eliminating existing limitations on the acquisition of critical habitat area; by allowing States to adopt more restrictive legislation than the Federal Government if they wish; and by mandating the Secretary of the Smithsonian Institution to study any plant species in possible danger of extinction, with the objective of recommending further action that Congress should take to protect endangered plant life.

It seems to me that man may lose more than he thinks, if he does not act to correct his interference with nature. A particular animal or plant species contributes much more to the world than general esthetic pleasure; it contributes to that much-used but little-understood phrase "the balance of nature." If man is going to grow sufficient food for himself; find cures for the diseases that plague him, and expand his understanding of how his own body functions, he will have to derive much of the needed knowledge from his fellow species.

In his effort to guard the Earth from his own awesome technological capacity, man has yet to learn that an instinct for self-preservation is not enough. He must direct both his intellect and ability to plan for the future toward insuring his self-preservation, as well. H.R. 37 represents recognition of this imperative.

Mr. ANNUNZIO. Mr. Speaker, H.R. 37—legislation for which I am a cosponsor. Passage of this measure today will be one more significant step toward righting a serious wrong. Simply stated—many of the thousands of animal species which have disappeared from the face of the Earth have gone because of the interference of mankind. Nearly a thousand species are endangered today because of man's interference with natural habitats, because of his greed, and because he fouls the air and the waters. We have filled the Red Book of the International Union for the Conservation of Nature with mammals, birds and fishes who are running out of places to go to escape human carelessness.

Historically the evolution of new species and the decline of others was a natural process—the result of various natural forces. However, as man emerged as a more dominant life form, things began to change. Our powerful technologies and our blind desire for "progress" enabled us to interrupt the rhythm of nature.

In the name of fashion, we have stalked our big cats and birds with showy plumage until they are gone forever from the face of the Earth—or threatened with extinction. In the name of science and education, we have shipped—and killed through poor and unregulated shipping regulations—countless animals.

Each year our growing world population places greater and greater stress on wilderness areas and national parks. We have crowded many species to the point where their numbers are too slight to insure survival in their natural habitat. Often, that habitat is threatened by land development.

We have mistreated our wildlife—one of nature's greatest gifts—and we are paying a high price. We have made attempts to stop the ravage of wild animals, but unless we do more, the price we pay will be still higher. Already we have denied our children and all generations that follow the wonder of some of our animals. We must not, as an international people, hesitate any longer, or we will seal the fate of grizzly and polar bears, spotted cats and so on. The balance of nature, on which we depend for our survival, depends on the survival of our wildlife.

Any action we take now will, unfortunately, be too late to save some species presently on the list. But we still have a chance to save thousands and thousands of species. We can still cut the Red Book list back drastically and increase our own well-being at the same time. Not all, but certainly some of the wrongs man has perpetrated on wildlife, can still be righted. I think the measures which we are considering today can help in that direction.

The United States has long been a leader in the effort to protect our animals. Enactment in 1969 of an important Endangered Species Act led the way to a more sane approach to caring for our living resources. But it has not proved to be enough.

We were, as a Nation, eager to participate in the Convention on International Trade in Endangered Species of Wild Fauna and Flora held in February of this year. That convention represents a significant turning point in the history of endangered species conservation, and especially in international cooperation to achieve protection for threatened animals. The measure we are considering today would speed formal U.S. participation in that convention.

H.R. 37 would extend maximum protection to the animals of this Nation which are endangered, or are likely to become endangered. It will assure active participation, by the States, in programs responsive to the needs of endangered animals found within the State.

One of our greatest needs is the acquisition of essential wildlife habitat. Our experience in wildlife management has taught us that the availability of habitat is a key factor in protection and restoration. H.R. 37 would remove the current ceiling imposed by law for the acquisition of essential wildlife habitat with land and water conservation fund moneys.

H.R. 37 would strengthen the protection afforded to endangered species by restricting import and export of endangered species.

There are many other provisions of H.R. 37 which are vital to the protection of endangered and threatened wildlife the world over. Those provisions have been carefully studied by conservationists, hunters, preservationists, ecologists, and by Members of the House and Senate. Strong support has come from all circles. As a cosponsor of this measure, I urge prompt passage of H.R. 37 and early enactment of an effective Endangered Species Act of 1973.

Mr. DON H. CLAUSEN. Mr. Speaker, I rise in support of H.R. 37, the Endangered and Threatened Species Conservation Act of 1973.

The need for this legislation is overwhelming. Current laws designed to protect species of fish and wildlife are no longer adequate to meet today's expanded needs. Recent research and studies have indicated that the pace of disappearance of species is rapidly accelerating and threatening the world's ecological balance. At present, the Department of the Interior recognizes more than 100 species of fish and wildlife which are threatened with extinction within the United States alone. The number threatened in the world as a whole reaches more than 400.

In addition to expanding our efforts to protect and conserve species which are already endangered, this legislation goes one step further. The most important feature of the bill is the provision extending protection to animals and plants which may become endangered within the foreseeable future.

In the past, little action was taken until the situation became critical and the species was dangerously close to total extinction. This legislation provides us with the means for preventive action.

As I am certain everyone will agree, it is far wiser to take such preventive steps to keep a species or subspecies from reaching this critical point than to stand idly by until emergency action is necessary which may not in every case be successful.

In my opinion, this bill is a milestone in this Nation's attempt to preserve its natural environment by altering slightly the philosophy we have adopted to protect and perpetuate our natural heritage.

I hope, Mr. Speaker, that H.R. 37 will be speedily enacted into law.

Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 37, the Endangered and Threatened Species Conservation Act under consideration today.

Fish and wildlife are extremely sensitive to any environmental changes. With our rapidly advancing technology causing topographic and climate changes, we must not be insensitive to the potentially damaging effect those changes may have upon wildlife.

We have begun to recognize the delicate balance between wildlife and its habitat. In 1970, while I served in New York State Assembly, we made some gains in protecting wildlife by legislating New York State's first endangered species bill. In 1971, we improved upon that legislation by strengthening existing regulations.

Today we are involved in a similar process. The original Federal endangered species law needs to be tightened. The measure now before us, H.R. 37, puts some teeth in our efforts to provide a program for the conservation and protection of endangered wildlife.

A particularly important provision in this measure is our State grant program. By offering an incentive to those States making serious efforts at formulating endangered species legislation, we will be encouraging our States to take worthwhile action in this often neglected area. We should not have to forever compensate for environmental changes resulting from excessive pollution, poor farming and forestry practices and other technologically destructive occurances. Having begun the battle in this area, let us continue to move forward.

H.R. 37 also includes provisions for extensively expanding our endangered species listings. In approving this legislation, we will be giving authority for the inclusion of those species which are not presently endangered but which might be threatened by extinction in the near future.

Such foresight will help avoid the regrettable plight of repairing damages already incurred. By heeding the warnings of possible extinction today, we will prevent tomorrow's crisis.

Accordingly, I urge and join with my colleagues in resoundingly adopting this measure so that we may begin to implement the provisions of this important conservation measure, the Endangered and Threatened Species Conservation Act.

The SPEAKER. The question is on the motion offered by the gentleman from Michigan (Mr. DINGELL) that the House suspend the rules and pass the bill H.R. 37, as amended.

The question was taken.

Mr. GROVER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 390, nays 12, not voting 32, as follows:

[Roll No. 461]

YEAS—390

Abzug
Adams
Addabbo
Alexander
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Arends
Armstrong
Ashbrook
Ashley
Aspin
Badillo
Bafalis
Baker
Barrett
Bauman
Beard
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blackburn
Blatnik
Boggs
Boland
Bolling
Bowen
Brademas
Brasco
Bray
Breaux
Breckinridge
Brinkley
Brooks
Broomfield
Brotzman
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Burgener
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Burton
Butler
Byron
Camp
Carey, N.Y.
Carney, Ohio
Carter
Casey, Tex.
Cederberg
Chamberlain
Chisholm
Clancy
Clark
Clausen, Don H.
Clawson, Del
Clay
Cleveland
Cochran
Cohen
Collins, Ill.
Collins, Tex.
Conable
Conlan
Conte
Conyers
Corman
Cotter
Coughlin
Cronin
Daniel, Dan
Daniel, Robert W., Jr.
Daniels, Dominick V.
Danielson
Davis, S.C.
Davis, Wis.
de la Garza
Delaney
Dellenback
Dellums
Denholm
Dennis
Dent
Derwinski
Devine
Dickinson
Diggs
Dingell
Donohue
Dorn
Downing
Drinan
Dulski
Duncan
du Pont
Eckhardt
Edwards, Ala.
Edwards, Calif.
Eilberg
Erlenborn
Esch
Eshleman
Evans, Colo.
Evins, Tenn.
Fascell
Findley
Fish
Fisher
Flood
Flowers
Flynt
Foley
Ford, Gerald R.
Ford, William D.
Forsythe
Fountain
Fraser
Frelinghuysen
Frenzel
Frey
Froehlich
Fulton
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Grover
Gubser
Gude
Gunter
Guyer
Haley
Hamilton
Hammerschmidt
Hanley
Hanrahan
Hansen, Wash.
Harrington
Harsha
Harvey
Hastings
Hawkins
Hays
Hébert
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Holifield
Holt
Holtzman
Horton
Hosmer
Howard
Huber
Hudnut
Hungate
Hunt
Hutchinson
Ichord
Jarman
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.

YEAS—Continued

Jones, Okla.
Jordan
Karth
Kastenmeier
Kazen
Keating
Kemp
Ketchum
King
Kluczynski
Koch
Kuykendall
Kyros
Landrum
Latta
Lehman
Lent
Litton
Long, La.
Long, Md.
Lott
McClory
McCollister
McCormack
McDade
McFall
McKay
McKinney
McSpadden
Macdonald
Madden
Madigan
Mahon
Mailliard
Mallary
Mann
Maraziti
Martin, Nebr.
Martin, N.C.
Mathias, Calif.
Mathis, Ga.
Matsunaga
Mayne
Mazzoli
Meeds
Melcher
Metcalfe
Mezvinsky
Michel
Milford
Miller
Minish
Mink
Minshall, Ohio
Mitchell, Md.
Mitchell, N.Y.
Moakley
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Murphy, Ill.
Murphy, N.Y.
Myers
Natcher
Nedzi
Nichols
Obey
O'Brien
O'Hara
Owens
Parris
Passman
Patten
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Podell
Powell, Ohio
Preyer
Price, Ill.
Pritchard
Quie
Quillen
Railsback
Randall
Rangel
Rees
Regula
Reid
Reuss
Rhodes
Riegle
Rinaldo
Roberts
Robinson, Va.
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, N.Y.
Rooney, Pa.
Rose
Rosenthal
Roush
Rousselot
Roy
Roybal
Ruppe
Ruth
Ryan
St Germain
Sarasin
Sarbanes
Saylor
Scherle
Schneebeli
Schroeder
Sebelius
Seiberling
Shipley
Shoup
Shuster
Sikes
Sisk
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Stark
Steed
Steele
Steiger, Wis.
Stephens
Stokes
Stratton
Stubblefield
Stuckey
Studds
Sullivan
Talcott
Taylor, Md.
Taylor, N.C.
Teague, Calif.
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Treen
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Veysey
Vigorito
Waggonner
Waldie
Walsh
Wampler
Ware
Whalen
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Winn
Wolff
Wright

YEAS—Continued

Wyatt
Wydler
Wylie
Wyman
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Ga.
Young, Ill.
Young, S.C.
Zablocki
Zwach

NAYS—12

Abdnor
Collier
Crane
Gross
Landgrebe
Nelsen
Price, Tex.
Rarick
Runnels
Satterfield
Steiger, Ariz.
Symms

NOT VOTING—32

Anderson, Ill.
Archer
Buchanan
Burke, Fla.
Burleson, Tex.
Chappell
Culver
Davis, Ga.
Gettys
Hanna
Hansen, Idaho
Hogan
Jones, Tenn.
Leggett
Lujan
McCloskey
McEwen
Mills, Ark.
Mizell
Nix
O'Neill
Patman
Rostenkowski
Sandman
Shriver
Stanton, James V.
Steelman
Symington
Teague, Tex.
Wilson, Charles, Tex.
Young, Tex.
Zion

So (two-thirds having voted in favor thereof), the rules were suspended and the bill as amended was passed.

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Anderson of Illinois.
Mr. Burleson of Texas with Mr. James V. Stanton.
Mr. Rostenkowski with Mr. Teague of Texas.
Mr. Hanna with Mr. Archer.
Mr. Chappell with Mr. Buchanan.
Mr. Jones of Tennessee with Mr. Lujan.
Mr. Young of Texas with Mr. Sandman.
Mr. Patman with Mr. Burke of Florida.
Mr. Culver with Mr. Hogan.
Mr. Symington with Mr. Nix.
Mr. Davis of Georgia with Mr. Mizell.
Mr. Gettys with Mr. Zion.
Mr. Steelman with Mr. McCloskey.

[From the Congressional Record, Sept. 18, 1973]

House Consideration and Passage of S. 1983, as Amended

Mr. Dingell. Mr. Speaker, I ask unanimous consent to take from the Speaker's table a similar Senate bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, and ask for immediate consideration of the Senate bill.

The Clerk read the title of the Senate bill.

The Speaker. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1983

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) Purposes.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

Sec. 3. As used in this Act—

(1) "Conservation" and "management" mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation and restoration of such species, including regulation and taking necessary to these ends.

(2) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(3) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range, other

than a species of the order insectica determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(4) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusks, crustaceon, arthropod or other invertebrate, or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(5) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(6) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(7) "Optimum carrying capacity" means the ability of a given habitat to support the optimum sustainable population of an endangered or threatened species in a healthy state without diminishing the ability of the habitat to continue that function.

(8) "Optimum sustainable population" means, with respect to any of endangered or threatened species, the number of such species will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent part.

(9) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(10) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(11) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of plants, the term means the Secretary of Agriculture.

(12) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(13) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(14) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(15) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(16) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(17) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretaries shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the list maintained pursuant to subsection (a) of this section, and may, with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than $150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) **Protective Regulations.**—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation and management of such species. With respect to any threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

Sec. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him; and

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

Sec. 6. (a) **General.**—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) **Management Agreements.**—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation and management of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) **Financial Assistance.**—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State establishes and maintains an adequate and active program for the conservation and management of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has statutory and regulatory authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs,

which are adequate, in the Secretary's judgment, for the conservation and management of species of endangered and threatened fish or wildlife;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation and management of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, conservation and management. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

(C) the number of endangered and threatened species within a State;

(D) the potential for restoring endangered and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year shall remain available for expenditure by such State until the close of the succeeding fiscal year. Any funds remaining obligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66⅔ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation regarding the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or results in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, or propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) **Convention Implementation.**—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

Sec. 9. (a) **Regulations.**—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Secretary may make application thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) **Procedure.**—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: *Provided*, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) **Judicial Review.**—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, no stay of an action may be granted unless the reviewing court determines that the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendations, if any, for the modification or setting aside of his original order.

(d) **Audit.**—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in paragraph (1) of this subsection of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

Sec. 10. (a) Prohibited Acts.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce any endangered species of fish or wildlife;

(6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimen traded contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulations which is promulgated by the Secretary pursuant to section 4(e) of this Act; or

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption, or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas. To facilitate enforcement of this paragraph and to reduce the costs of enforcements, the Secretary, with the approval of the Secretary of the Treasury and after notice, and opportunity for public hearing, may, by regulation, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) Similarity of Appearance Cases.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(c) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act.

EXCEPTIONS

SEC. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—

(1) for scientific purposes in furtherance of the purposes of this Act; or

(2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat.

(b)(1) HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception will cause undue economic hardship: *Provided*, That such exception shall be granted any non-Native resident of an Alaska Native village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles or handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified by the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of a proposed listing of such species as an endangered or threatened species.

(B) Substantial economic loss to persons who, for the year prior to the listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or

(C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) PROCEDURE.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such endangered or threatened species and will be consistent with the policy of this Act.

(d) ALASKA NATIVES.—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska if such taking is for the purpose of consumption or use in a native community for the purpose of selling or creating for sale in interstate commerce authentic native articles or handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native village or towns; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—

(A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas

for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Criminal Violations.—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection. The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation made pursuant to this section of any lease, license, permit, stamp, or other agreement.

(c) Rewards.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exced $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(d) Enforcement.—(1) The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish or wildlife, or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) Registration.—(1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) Enforcement Regulations.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen Suits.—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles. No proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 13. The Secretary of Agriculture, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed $250,000.

CONFORMING AMENDMENTS

SEC. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the section sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species,".

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

> "THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."

and inserting in lieu thereof the following:

> "ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k–1), is amended to read as follows:

"SEC. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

> "(1) incidental fish- and wildlife-oriented recreational development,
>
> "(2) the protection of natural resources,
>
> "(3) the conservation of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or
>
> "(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein

pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973."

(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91-135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973."

REPEALER

SEC. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6) is repealed.

APPLICABILITY WITHIN STATES

SEC. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in this plan. In no event shall such State plan go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience. to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any

State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: *Provided*, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a State which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may by regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the conservation and management of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provision of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $3,960,000 for the fiscal year ending June 30, 1974; not to exceed $6,660,000 for the fiscal year ending June 30, 1975; and not to exceed $8,870,000 for the fiscal year ending June 30, 1976.

SEC. 19. (a) That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892: 16 U.S.C. 1132(b)), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

(b) As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however*, That correction of clerical and typographical errors in such legal description and map be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture.

(c) The wilderness area designated by this Act shall be known as the Cave Run Wilderness and shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(d) Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zilpo recreation site access road generally on a route extending northward from Forest Development Road Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

MOTION OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Dingell moves to strike out all after the enacting clause of S. 1983 and insert in lieu thereof the provisions of H.R. 37, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to provide for the conservation, protection, restoration, or propagation of endangered and threatened species of fish, wildlife, and plants, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 37) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 1983, ENDANGERED AND THREATENED SPECIES CONSERVATION ACT OF 1973

Mr. DINGELL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, with House amendments thereto, insist on the House amendments, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Michigan? The Chair hears none and appoints the following conferees: Mrs. Sullivan and Messrs. Dingell and Goodling.

Calendar No. 289

93D CONGRESS
1ST SESSION

S. 1983

[Report No. 93–307]

IN THE SENATE OF THE UNITED STATES

JUNE 12, 1973

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Commerce

JULY 1, 1973

Reported, under the authority of the order of the Senate of June 30, 1973, by Mr. MAGNUSON, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Endangered Species Conservation Act of 1973".~~

~~FINDINGS AND POLICY~~

~~SEC. 2. (a) The Congress finds and declares that one of the unfortunate consequences of growth and development in the United States and elsewhere has been the extermina-~~

~~tion of some species or subspecies of fish and wildlife and flora; that serious losses in other species of wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico, the migratory and endangered bird treaty with Japan, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, the International Convention for the Northwest Atlantic Fisheries, the International Convention for the High Seas Fisheries of the North Pacific Ocean, and other international agreements, to conserve and protect, where practicable, the various species of fish and wildlife and flora that are threatened with extinction; and that the conservation, protection, restoration, or propagation of such species will inure to the benefit of all citizens. The purposes of this Act are to provide a program for the conservation, protection, restoration, or propagation of species and subspecies of fish and wildlife and flora that are threatened with extinction, or are likely within the foreseeable future to become threatened with extinction.~~

~~(b) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to protect species or subspecies of fish and wildlife, and flora that are threatened with extinction or are likely within the foresee-~~

~~able future to become threatened with extinction, and wherever practicable, shall utilize their authorities in furtherance of the purpose of this Act.~~

~~DEFINITIONS~~

~~SEC. 3. For the purposes of this Act:~~

~~(1) The term "Federal lands" means all lands or interests therein over which Congress has legislative authority under article IV, section 3, clause 2 of the United States Constitution, including, without limitation, lands enumerated in section 1400 of title 43, United States Code.~~

~~(2) The term "fish" means any fish or any part, products, eggs, or offspring thereof, or the dead body or parts thereof.~~

~~(3) The term "import" means to bring into the territorial limits of the United States and includes, without limitation, entry into a foreign trade zone, and transshipment through any portion of the United States without customs entry.~~

~~(4) The term "person" means (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.~~

~~(5) The term "Secretary" means the Secretary of~~

~~the Interior with respect to functions and responsibilities under this Act relating to fish and wildlife, and the Secretary of Agriculture with respect to functions and responsibilities under this Act relating to flora~~.

~~(6) The term "take" means (A) with respect to fish or wildlife, to threaten, harass, hunt, capture, or kill, or attempt to threaten, harass, hunt, capture, or kill; or the destruction, modification, or curtailment of its habitat or range; and (B) with respect to flora, to collect, sever, remove, or otherwise damage in any manner, or to attempt to collect, sever, remove, or otherwise damage in any manner.~~

~~(7) The term "United States" includes the several States, the District of Columbia, and the Commonwealth of Puerto Rico, the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands~~.

~~(8) The term "wildlife" means any wild mammal, game or nongame migratory bird, wild bird, amphibian, reptile, mollusk or crustacean, or other animal, or any part, products, egg, or offspring thereof, or the dead body or parts thereof, including migratory, nonmigratory, and endangered birds for which protection is also afforded by treaty or other international agreement.~~

~~DETERMINATION OF ENDANGERED SPECIES~~

~~SEC. 4. (a) A species or subspecies of fish or wildlife or flora shall be regarded as an endangered species, whenever—~~

~~(1) the appropriate Secretary by regulation determines, based on the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, and, in cooperation with the Secretary of State, the country or countries in which such fish and wildlife are normally found or whose citizens harvest the same on the high seas, and with interested persons and organizations, and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife or flora, throughout all or a significant portion of its habitat or range, is either presently threatened with extinction or will likely within the foreseeable future become threatened with extinction, due to any of the following factors:~~

~~(A) the present or threatened destruction, modification, or curtailment of its habitat or range;~~

~~(B) overutilization for commercial, sporting, scientific, or educational purposes;~~

~~(C) disease or predation;~~

~~(D) the inadequacy of existing regulatory mechanisms; or~~

~~(E) other natural or manmade factors affecting its continued existence; or,~~

~~(2) the status of such species or subspecies is unknown.~~

~~(b) The appropriate Secretary shall publish in the Federal Register, not less than annually, a list, by scientific and common name or names, of species or subspecies determined, pursuant to this section, to be endangered, indicating as to each species or subspecies so listed whether such species or subspecies is threatened with extinction or is likely within the foreseeable future to become threatened with extinction or whether its status is unknown and, in either case, over what portion of the range of such species or subspecies this condition exists. The appropriate Secretary may, from time to time, by regulation revise any such list. The endangered species lists which are effective as of the date of enactment of this Act shall be republished to conform to the provisions of this Act: *Provided, however*, That until such republication nothing herein shall be deemed to invalidate such endangered species lists. The provisions of section 553 of title 5, United States Code, shall apply to any regulation issued under this subsection. The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5,~~

~~United States Code, also conduct a review, on the record, after opportunity for agency hearing of any listed or unlisted species of fish or wildlife proposed to be removed from or added to the list, but only if he finds and publishes his findings that such person has presented substantial evidence to warrant such review.~~

~~LAND ACQUISITION AND AGENCY COMPLIANCE~~

~~SEC. 5. (a) The Secretary shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act, as appropriate, to carry out a program in the United States of conserving, protecting, restoring, or propagating those species and subspecies of fish and wildlife that he lists as endangered species pursuant to section 2 of this Act.~~

~~(b) In addition to the land acquisition authorities otherwise available to him, the appropriate Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of those species or subspecies of fish and wildlife and flora that he lists as endangered species pursuant to section 4 of this Act.~~

~~(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may~~

~~be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, or propagating those species or subspecies of fish and wildlife and flora that he lists as endangered species pursuant to section 4 of this Act.~~

~~(d) The appropriate Secretary shall review other programs administered by him and, to the extent practicable utilize such programs in furtherance of the purpose of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize, wherever practicable, their authorities in furtherance of the purpose of this Act by carrying out programs for the protection of endangered species of fish or wildlife or flora and by taking such actions as may be necessary to insure that actions authorized, funded, regulated, or administered by them do not jeopardize the continued existence of endangered species or result in destruction or modification of critical habitat of such species.~~

~~(f) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to species or subspecies of fish or wildlife threatened with extinction, to take measures to prevent any fish or wildlife from becoming threatened with extinction, and he shall, through the Secre-~~

~~tary of State, encourage bilateral and multilateral agreements with such countries for the conservation and propagation of fish and wildlife. The Secretary is authorized to assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote conservation of fish or wildlife, including (1) educational training of United States and foreign personnel, here or abroad, in the subjects of fish and wildlife management, research, and law enforcement; and (2) rendering professional assistance abroad in such matters. The Secretary is also authorized to conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the obligations imposed upon him by this Act.~~

~~COOPERATION WITH THE STATES~~

~~SEC. 6. (a) In carrying out the program authorized by this Act, the appropriate Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species.~~

~~(b) The Secretary may enter into agreements with the States for the administration and management of any area~~

~~established for the conservation, protection, restoration, or propagation of endangered species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).~~

~~(c) The Secretary may delegate to a State the authority to regulate the taking by any person of endangered species or subspecies of resident fish and wildlife when he determines that such State maintains an adequate and active program, consistent with the policies and purposes of this Act, to manage and protect such endangered species in accordance with criteria issued by the Secretary.~~

~~(d) Any action taken by the Secretary under this section shall be subject to his periodic and continual review at no greater than annual intervals. Such review shall include the consideration of comment received from interested persons.~~

~~(e) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting the power of any State to enact legislation more restrictive than the provisions of this Act for the protection and conservation of wildlife, including the regulation or prohibition of the retail sale of specimens or of products processed or manufactured from the specimens of wildlife, whether such specimens are alive or dead.~~

~~(f) The Secretary of the Interior shall promptly undertake an investigation and study regarding the functions and responsibilities which the States should have with respect to the management and protection of endangered species of fish and wildlife. The Secretary shall report the results of the investigation and study to Congress within one year after the date of the enactment of this Act, and such report may include such recommendations as the Secretary may have regarding the extent to, and manner in, which the Federal Government should assist the States in establishing and implementing management and protection programs for endangered species.~~

~~PROHIBITED ACTS~~

~~SEC. 7. (a) Notwithstanding any other Act of Congress or regulation issued pursuant thereto, and except as hereinafter provided, any person who—~~

~~(A) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or~~

~~(B) takes or causes to be taken within the United States, the territorial sea of the United States, Federal lands, or upon the high seas; or~~

~~(C) ships, carries, or receives by any means in interstate commerce~~

~~any species or subspecies of fish or wildlife or flora which~~

~~the Secretary has listed as an endangered species threatened with extinction pursuant to section 4 of this Act, shall be punished in accordance with the provisions of section 9 of this Act.~~

~~(b) Whenever the Secretary, pursuant to section 4 of this Act, lists a species or subspecies as an endangered species which is likely within the foreseeable future to become threatened with extinction, he shall issue such regulations as he deems necessary or advisable to provide for the conservation, protection, restoration, or propagation of such species or subspecies, including regulations subjecting to punishment in accordance with section 9 of this Act any person who—~~

~~(1) imports into or exports from the United States, receives, or causes to be so imported, received, or exported; or~~

~~(2) takes or causes to be taken within the United States, the territorial sea of the United States, Federal lands or upon the high seas; or~~

~~(3) ships, carries, or receives by any means in interstate commerce~~

~~any such species or subspecies of fish or wildlife or flora likely within the foreseeable future to become threatened with extinction.~~

~~(c) The Secretary shall allow taking of an endangered~~

~~species which is likely within the foreseeable future to become threatened only (1) when it can clearly be shown that such taking will not damage the population, or (2) in emergency cases involving human health and safety.~~

~~(d) For the purpose of facilitating enforcement of this Act the Secretary may from time to time, by regulation, extend the protection of this section, to the extent he deems it advisable, to any species or subspecies of fish or wildlife or flora which is not listed as an endangered species, but which so closely resembles in appearance, at that point in question, a species or subspecies of fish or wildlife or flora which has been listed as endangered, that substantial difficulty is posed to enforcement personnel in attempting to differentiate between the endangered and nonendangered species of subspecies of fish or wildlife or flora, and this difficulty poses an additional threat to the endangered species or subspecies.~~

~~EXCEPTIONS~~

~~SEC. 8. (a) The Secretary may permit, under such terms and conditions as he may prescribe, the importation, taking, or the transportation in interstate commerce of any species or subspecies of fish or wildlife or flora listed as an endangered species threatened with extinction for scientific purposes, and for the propagation of such fish and wildlife in captivity for preservation purposes, but only if he finds that such importation, taking, or transportation in interstate~~

~~commerce, or projected use will not adversely affect the regenerative capacity of such specimen or of such species or subspecies in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species.~~

~~(b) In order to minimize undue economic hardship to any person importing, exporting, taking, or transporting in interstate commerce any species or subspecies of fish or wildlife or flora which is listed as an endangered species pursuant to section 4 of this Act under any contract entered into prior to the date of original publication of such listing in the Federal Register, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may permit such person to import, export, take, or transport such species or subspecies in such quantities and for a period not to exceed one year, as he determines to be appropriate.~~

~~PENALTIES AND ENFORCEMENT~~

~~SEC. 9. (a) (1) Any person who violates any provision of this Act or any regulation or permit issued thereunder, other than a person who commits a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the appropriate Secretary of not more than $10,000 for each such violation.~~

~~No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the appropriate Secretary. Upon any failure to pay the penalty assessed under this paragraph, the appropriate Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In the case of Guam such actions may be brought in the District Court of Guam; in the case of the Virgin Islands such actions may be brought in the District Court of the Virgin Islands; and in the case of American Samoa such actions may be brought in the District Court of the United States for the district of Hawaii and such courts shall have jurisdiction of such actions. In hearing such action, the court shall sustain the Secretary's action if such action is supported by substantial evidence.~~

~~(2) Whenever any property is seized pursuant to subsection (e) of this section, the appropriate Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. Upon the assessment and collection of a civil penalty pursuant to paragraph (1) of this subsection, any property so~~

~~seized may be proceeded against in any court of competent jurisdiction and forfeited. Fish or wildlife or flora so forfeited shall be conveyed to the appropriate Secretary for disposition by him in such a manner as he deems appropriate. If, with respect to any such property so seized, no compromise forfeiture has been achieved or no action is commenced to obtain the forfeiture of such fish, wildlife, flora, property, or item within thirty days following the completion of a civil ceedings involving an assessment and collection of a civil penalty, such property shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.~~

~~(3) Proceedings for the assessment of civil penalties pursuant to paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5. The appropriate Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to~~

~~issue an order requiring such person to appear and give testimony before the appropriate Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.~~

~~(b) Any person who knowingly violates any provision of this Act, or any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both, and any Federal hunting or fishing licenses, permits, or stamps may be revoked or withheld for a period of up to five years. Upon conviction, (1) any fish or wildlife or flora seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property seized pursuant to subsection (c) of this section may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. If no conviction results from any such alleged violation, such property so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the appropriate Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violations, commences proceedings under subsection (a) of this section.~~

~~(c) (1) The provisions of sections 7 and 8 of this Act~~

~~and any regulations or permits issued pursuant thereto, or pursuant to subsection (d) or (e) of this section, shall be enforced by the appropriate Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency.~~

~~(2) Any authorized agent of the Departments of the Interior, of Commerce, of Agriculture, or of the Treasury may, with or without a warrant, arrest any person who such agent has probable cause to believe is knowingly violating this Act, in his presence or view, or any regulation or permit issued thereunder, the penalty for which is provided under subsection (b) of this section. An agent who has made an arrest of a person in connection with any such willful violation may search such person at the time of his arrest and seize any property taken, used, or possessed in connection with any such violation.~~

~~(3) Any authorized agent of the Departments of the Interior, of Commerce, of Agriculture, or of the Treasury shall have authority to search and seize with or without a warrant, as provided by the customs laws and by the law relating to search and seizure. Any such officer or agent is authorized to execute warrants to search for and seize any~~

~~property, including, for the purposes of this section, any fish, wildlife, flora, aircraft, boat, or other conveyance, weapon, business records, shipping documents, or other items which have been taken, used, or possessed in connection with the violation of any section, regulation, or permit with respect to which a civil or criminal penalty may be assessed, pursuant to subsection (a) or (b) of this section. Any property seized pursuant to this section shall be held by any agent authorized by the Secretary or the Secretary of the Treasury, or by a United States marshal, pending disposition of proceedings under subsection (a) or (b) of this section; except that either Secretary may, in lieu of holding such property, either (1) permit a bond or other satisfactory surety to be posted, or (2) place the fish or wildlife or flora in the custody of such person as he shall designate. Upon the imposition of a civil or criminal penalty, or a forfeiture, the costs to the Government of transfer, board, and handling, including the cost of investigations at a nondesignated port of entry, shall be payable to the account of the Secretary. The owner or consignee of any property so seized shall, as soon as practicable following such seizure, be notified of the fact in accordance with regulations established by the Secretary~~.

~~(d) The Secretary may request the Attorney General to bring appropriate action to prevent threatened violations~~

~~of this Act, or of any regulations or orders promulgated pursuant thereto~~.

~~(e) For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the importation of fish and wildlife (other than shellfish and fishery products) or flora into the United States. The importation of such fish or wildlife or flora into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at nondesignated ports in the interest of the health or safety of the fish or wildlife. Such regulations may provide other exceptions to such prohibition if the Secretary, in his discretion, deems it appropriate and consistent with the purposes of this subsection~~.

~~(f) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the purposes of this Act, and the Secretaries of the Treasury and the Department in which the Coast Guard is operating are authorized to promulgate such regulations as may be appropriate to the exercise of responsibilities under subsection (e) (1) of this section.~~

~~(g) (1) Any person who engages to any extent in business as an importer of fish and wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.~~

~~(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—~~

~~(A) keep such records as will fully and correctly disclose each importation of fish and wildlife made by him and the subsequent disposition made by him with respect to such fish and wildlife; and~~

~~(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business and opportunity to examine his inventory of imported fish and wildlife and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records.~~

~~(3) The Secretary of the Treasury shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.~~

~~INTERNATIONAL AND INTERGOVERNMENTAL COOPERATION~~

~~SEC. 10. (a) (1) In carrying out the provisions of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to~~

~~species or subspecies of fish and wildlife or flora threatened with extinction, to take measures to prevent any fish or wildlife from becoming threatened with extinction, and shall cooperate with such countries in providing technical assistance in developing and carrying out programs to provide such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, or propagation of fish and wildlife or flora. The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife or flora in foreign countries or on the high seas for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife or flora and their habitat or range. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife or flora from becoming threatened with extinction.~~

~~(2) To assure the worldwide conservation of endangered species and to avoid unnecessary harm to affected United States industries, the Secretary, through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to November 1,~~

~~1973, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.~~

~~(b) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (19 U.S.C. 1306; 21 U.S.C. 101-105, 111-135b, and 612-614). Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.~~

~~(c) Whenever the Secretary determines pursuant to this Act or any other authority vested in him, that a species of fish or wildlife is an endangered species, and publishes regulations pertaining to the protection, control, management, or enhancement of such endangered species, the Secretary of Agriculture may use all authorities available to him with respect to research, investigations, conservation, development, protection, management, and enhancement of fish~~

~~and wildlife, including, but not limited to, the conservation operations program, watershed protection and flood prevention programs, rural environmental assistance program, Great Plains conservation program, resource conservation and development program, forestry programs, and water bank program, in the protection, control, management, or enhancement of such endangered species. Recognizing the national and international interest in the protection and enhancement of such endangered species, the Secretary of Agriculture is authorized, notwithstanding the provisions of any other law, to bear the full cost, or any lesser amount that he, in consultation with the Secretary may determine desirable to accomplish the objectives of the Act, of the cost of installing any practice, measure, work of improvement, facility, or other developmental, protective, or management systems on private land, the primary purpose of which is for the purpose of enabling the landowner to comply with the regulations, or other recommendations, of the Secretary pertaining to the protection, control, management, or enhancement of such endangered species. The Secretary of Agriculture, in carrying out the purposes of this section, shall utilize his authorities to conduct research and investigations into vegetative and structural methods and other methods and practices, measures, works of improvement, and facilities most appropriate or effective in the protection, control, man-~~

~~agement, or enhancement of such endangered species. If determined desirable, the Secretary and the Secretary of Agriculture shall be authorized to jointly carry out research, surveys, and investigations. The Secretary is authorized to transfer to the Secretary of Agriculture such funds as may be necessary to carry out the purposes of this subsection.~~

~~(d) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 527 of such Act relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.~~

~~CONFORMING AMENDMENTS~~

~~SEC. 11. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928), as amended (16 U.S.C. 668dd (c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species listed by the secretary pursuant to section 4 of the Endangered Species Conservation Act of 1973, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."~~

~~(b) Subsection 10(a) of the Migratory Bird Conser-~~

~~vation Act (45 Stat. 1224), as amended (16 U.S.C. 715 i(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".~~

~~(c) Subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s(a)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction" in the last sentence thereof.~~

~~(d) Subsection 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903), as amended (16 U.S.C. 4601-9(a)(1)), is further amended by inserting "or likely within the foreseeable future to become threatened with" between the words "with" and "extinction".~~

~~REPEALS~~

~~SEC. 12. (a) Sections 1 through 3 of the Act of October 15, 1966 (80 Stat. 926, 927), as amended (16 U.S.C. 668aa-668cc), are hereby repealed in their entirety.~~

~~(b) Sections 1 through 6 of the Act of December 5, 1969 (83 Stat. 275-279; 16 U.S.C. 668cc-1 through 668cc-6) are hereby repealed in their entirety.~~

That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of educational, historical, recreational, and scientific value to the Nation and its people;.

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the

Nation's international commitments with respect to endangered and threatened fish or wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

Sec. 3. As used in this Act—

(1) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(2) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range.

(3) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(4) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(5) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(6) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(7) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(8) "Secretary" means, except as otherwise pro-

vided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of terrestrial plants, the term means the Secretary of Agriculture.

(9) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(10) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(11) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(12) "Take" means to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(13) "Threatened species" means any species of fish or wildlife which is likely to become an endangered

species within the foreseeable future throughout all or a significant portion of its range.

(14) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate,

with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) In determining whether or not any fish or wildlife is an endangered or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect within any area under its jurisdiction such fish or wildlife, whether by predator control, protection of habitat and food supply, or other conservation or management practices.

(3) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any for-

eign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of

enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretary shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassi-

fication within the lists maintained pursuant to subsection (a) of this section, and may, with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than $150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) PROTECTIVE REGULATIONS.—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, or propagation of such species. With respect to any endangered or threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

SEC. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition

and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him; and

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into an agreement or agreements with any State

for the administration and management of any area established for the conservation, protection, restoration, or propagation of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) FINANCIAL ASSISTANCE.—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the management, conservation, protection, and restoration of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has

furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs,

which are adequate, in the Secretary's judgment, for the conservation, protection, restoration, and propagation of species of fish or wildlife facing extinction;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation, protection, restoration, and propagation of endangered and threatened species; and

(6) provision is made for public participation in

designating species of resident fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, research, censusing, law enforcement, and habitat acquisition or improvement. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the national significance of a species found to be endangered or threatened within a State; and

(C) the potential for preventing extinction of a species or for restoring a species to nonendangered or nonthreatened status.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year remain available for expenditure by such State until the close of the succeeding fiscal year.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived

in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66⅔ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated not to exceed $10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the

Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: Provided, That any State law or regulation of the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of *the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—*

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the

Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: Provided, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, or propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial

or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) P*ERSONNEL.—After consultation with the Secretary of State, the Secretary may—*

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) I*NVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.*

(e) C*ONVENTION* I*MPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Conven-*

tion. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication *of the proposed regulation, the Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.*

(b) Procedure.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: Provided, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) Judicial Review.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under

section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, no stay of an action may be granted unless the reviewing court determines that the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary,

the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings by reason of the additional evidence *so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order.*

(d) AUDIT.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

SEC. 10. (a) PROHIBITED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce specimens or products processed or manufactured in whole or in part from specimens of any such species;

(6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulation which is promulgated by the Secretary pursuant to section 4(e) of this Act; or

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption or taken for recreational purposes in waters under United States jurisdiction or on the high seas. To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of

the Act of December 5, 1969 (16 U.S.C. 666cc-4 (d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

EXCEPTIONS

SEC. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative *capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—*

(1) scientific purposes in furtherance of the purposes of this Act; or

(2) the propagation of such species in captivity or in a controlled habitat.

(b) HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person who enters into a contract with respect to a species of fish or wildlife before the date of publication in the Federal Register of notice of a proposed listing of that species as an endangered or threatened species if the failure to grant such exception will cause undue economic hardship to such person under the contract. The extent and duration of such exception shall be such as the Secretary deems appropriate. No such exception shall be granted unless such person applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove such hardship. No such exception shall be for a duration of more than one year from

the date of publication in the Federal Register of notice of a proposed listing of the involved species, nor shall such exception apply to a quantity of fish or wildlife in excess of that specified by the Secretary. The one-year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(c) Procedure.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such en-

dangered or threatened species and will be consistent with the policy of this Act.

(d) ALASKA NATIVES.—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaskan native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic native articles of handicrafts and clothing: Provided, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not lim-

ited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species, and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: Provided, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—

(A) knowingly violates any provision of this Act

or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation.

No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and *shall sustain his action if it is supported by substantial evidence on the record considered as a whole.*

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATIONS.—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon

conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection. The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation of any lease, license, permit, stamp, or other agreement.

(c) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in

the performance of his official duties shall not be eligible for payment under this section.

(d) ENFORCEMENT.*—(1) The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.*

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any

person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish or wildlife, or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from

the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) Registration.—(1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife and

(B) at all reasonable times upon notice by a duly

authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) ENFORCEMENT REGULATIONS.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the

United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles. No proceeding or determination under this Act shall preclude

any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 13. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed $250,000.

CONFORMING AMENDMENTS

SEC. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threat-

ened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species,".

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a)1)) is amended by striking out:

> *"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."*

and inserting in lieu thereof the following:

> *"ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserv-*

ing, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k–1), is amended to read as follows:

"SEC. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish- and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the protection of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section,

and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conser-

vation Act of 1969" in section(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

REPEALER

SEC. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6) is repealed.

APPLICABILITY WITHIN STATES

Sec. 16. (a) State Plan.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) Determination by Secretary.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) Periodic Review.—The Secretary shall periodically, but not less than once every three years, review each

State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: Provided, That the provisions of subsection (a) of section 10 of this Act shall be effective upon the date of enactment of this Act within any State which does not prevent the taking of any species listed by the Secretary as an endangered species. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to sub-

section (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the management and taking of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United

States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $3,960,000 for the fiscal year ending June 30, 1974; not to exceed $6,660,000 for the fiscal year ending June 30, 1975; and not to exceed $8,870,000 for the fiscal year ending June 30, 1976.

Amend the title so as to read: "A bill to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes."

Calendar No. 289

93D CONGRESS } SENATE { REPORT
1st Session } { No. 93–307

ENDANGERED SPECIES ACT OF 1973

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 1983

TO PROVIDE FOR THE CONSERVATION, PROTECTION, AND PROPAGATION OF SPECIES OR SUBSPECIES OF FISH AND WILDLIFE THAT ARE THREATENED WITH EXTINCTION OR LIKELY WITHIN THE FORESEEABLE FUTURE TO BECOME THREATENED WITH EXTINCTION, AND FOR OTHER PURPOSES

U.S. GOVERNMENT PRINTING OFFICE
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CONTENTS

	Page
Purpose	1
Background	2
Need for the legislation	3
Other provisions	5
Section-by-section analysis	6
Text of S. 1983, as reported	12
Cost estimates	32
Changes in existing law	32
Agency comments	41

Calendar No. 289

93D CONGRESS
1st Session
SENATE
REPORT
No. 93-307

ENDANGERED SPECIES ACT OF 1973

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Mr. MAGNUSON, from the Committee on Commerce,
submitted the following

REPORT

[To accompany S. 1983]

The Committee on Commerce, to which was referred the bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of species of fish, wildlife, and plants facing extinction, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE

The purpose of this bill is to provide for conservation, protection and propagation of endangered species of fish and wildlife by Federal action and by encouraging the establishment of State endangered species conservation programs. The methods include authorization to the Secretaries of Interior and Commerce to list species which are either (1) endangered or (2) likely to become endangered within the forseeable future, and authority to establish an Advisory Committee for consultation regarding this list; authorization to the Secretary to use certain existing legislation for land acquisition; provision for criminal and civil penalties for violation of its prohibitions; provision for the administrative implementation of the international convention on endangered species; management of endangered and threatened species by the States under State plans that are approved by the Secretary; and provision for financial aid to State wildlife management agencies which enter into cooperative or management agreements with the Secretary.

Programs provided by this bill are to be administered jointly by the Secretary of the Interior and the Secretary of Commerce within their respective jurisdictions as regards fish or wildlife, as provided by Reorganization Plan No. 4 of 1970.

BACKGROUND

It has become increasingly apparent that some sort of protective measures must be taken to prevent the further extinction of many of the world's animal species. The number of animals on the Secretary of the Interior's list of domestic species that are currently threatened with extinction is now 109 On the foreign list, there are over 300 species. Further, the rate of extinction has increased to where on the average, one species disappears per year.

Consideration of this need to protect endangered species goes beyond the aesthetic. In hearings before the Subcommittee on the Environment it was shown that many of these animals perform vital biological services to maintain a "balance of nature" within their environments. Also revealed was the need for biological diversity for scientific purposes.

The two major causes of extinction are hunting and destruction of natural habitat.

The first comprehensive endangered species legislation was enacted by the 89th Congress and has become known as the Endangered Species Preservation Act of October 15, 1966, (Public Law 89-669 (80 Stat. 926)). This Act achieved a dual objective: First, it authorized and directed the Secretary of the Interior to initiate and carry out a comprehensive program to conserve, restore, and where necessary to bolster wild populations to propagate selected species of *native* fish and wildlife, including game and non-game birds, that he found to be threatened with extinction. Secondly, it consolidated and in some cases expanded the authorities of the Secretary of the Interior relating to the management and administration of the National Wildlife Refuge System.

The 91st Congress enacted Public Law 91-135 (83 Stat. 275), known as the Endangered Species Conservation Act of 1969. This law expanded the endangered species program in at least three significant respects:

First, to help insure that the United States does not contribute to the extirpation of other nations' wildlife, the Secretary of the Interior was authorized to develop a list of species or subspecies of animals that were threatened with worldwide extinction, and to prohibit the importation from a foreign country of any such animal or any part, any product, or egg thereof. Two limited exceptions to this prohibition were provided: the first authorizes the Secretary to issue permits for the importation of listed animals for scientific, educational zoological or propagational purposes; the second allows the Secretary to permit for one year the importation of such animals or products for commercial purposes if the importer was a party to a contract entered into prior to the date the animal was placed on the list if the importer would otherwise suffer "undue economic hardship".

Second, in order to assist the States in protecting domestically endangered species, the legislation amended existing laws to make unlawful throughout the United States their sale or purchase by any person who knows, or in the exercise of due care should know, that such animal was taken in any manner in violation of the laws or regulations of a State or foreign country. These provisions supplement an existing statute which currently prevents the interstate sale or purchase of fish, mammals, or birds in violation of State or foreign law.

Third, in order to further assist in the protection of domestically endangered species the law increased the amounts authorized to be appropriated to acquire lands for the purpose of conserving, protecting, restoring, or propagating any endangered species. This new authority for use of funds contained limits of $2.5 million per area and $5 million per year, and $15 million total ceiling.

NEED FOR THE LEGISLATION

While the Acts of 1966 and 1969 laid the framework for an increasingly effective endangered species conservation program, the Department of the Interior has indicated some difficulties in expanding the practical effect of the program to the spirit of the original legislation. As the President stated in his Environmental Message of February 8, 1972, the existing law "simply does not provide the kind of management tools needed to act early enough to save a vanishing species."

From testimony offered at hearings on the bill, it is apparent that the following four requirements must be satisfied if the bill is to be effective:

(1) The bill must provide the Secretary with sufficient discretion in listing and delisting animals so that he may afford present protection to those species which are either in present danger of extinction or likely within the foreseeable future to become so endangered; (2) the bill must provide protection throughout the nation for animals which are either endangered or threatened; (3) the bill must lift the statutory restrictions that existing law places on authorization of monies for habitat acquisition from the Land and Water Conservation Fund Act, and extend to the Secretary land acquisition powers for such purposes from other existing legislation; and (4) finally, it became apparent in hearings that many established State agencies could in the future, or do now provide efficient management programs for the benefit of endangered species.

While the Federal government should protect such species where States have failed to meet minimum Federal standards, it should not pre-empt efficient programs. Instead, it should encourage these, and aid in the extension or establishment of others, to facilitate management by granting regulatory authority and making available financial assistance to approved schemes. The reported bill is designed to meet these requirements.

The bill provides a broadened concept of "endangered species" by affording the Secretary the additional power to list animals which he determines are likely within the foreseeable future to become threatened with extinction. This gives effect to the Secretary's ability to forecast population trends by permitting him to regulate these animals before the danger becomes imminent while long-range action is begun. By creating two levels of protection, regulatory mechanisms may more easily be tailored to the needs of the endangered animals. Flexibility in regulation is enhanced by a provision which allows for listing if the animal is endangered over a "substantial portion of its range". The Secretary makes his listing in full consideration of the forces which acted to bring about such endangerment. The Secretary is required to appoint an advisory committee for consultative purposes to aid in the review of these lists.

The bill makes violations of conduct prohibited under the bill subject either to civil penalties up to $10,000 or, to criminal penalties with fines levied up to $20,000 and/or imprisonment for up to one year. For the first time, the knowing taking of an endangered animal in violation of the law is a criminal offense where the Federal government has retained management power.

The Secretary may make certain exemptions from the prohibitions for scientific purposes or for the propagation of the species in controlled habitats, if he finds that such excepted conduct furthers the intent of the Act. The Committee wishes to clarify that such exemptions may be granted to individuals with legitimate claims who breed such animals domestically, whether or not they are associated with an institution. He may also receive applications for exemption where it is proven to him that failure to grant such an exemption will cause undue economic hardship to the applicant. The Secretary shall carefully scrutinize such applications to assure validity of the claim, and no such hardship exemption shall be longer than one year.

LAND ACQUISITION

Because the authorization for habitat acquisition under the 1969 Act *expired* this year, the Committee reviewed carefully the wisdom of the restrictive authorization ceilings for the habitat acquisition under existing authority. Accordingly, the reported bill permits the Secretary to use funds available to him under the Land and Water Conservation Fund Act with no ceiling attached. In addition, he may utilize his authorities under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act for land acquisition. Often, protection of habitat is the only means of protecting endangered animals which occur on non-public lands. With programs for protection underway, and worthy of continuation into the foreseeable future, an accelerated land acquisition program is essential.

The Committee finds that the most efficient way to enforce the prohibitions of this bill and to develop the most appropriate and extensive programs is through utilization of the agencies already established for such purposes within the States and development of the potential for such State programs where they do not already exist or have less than sufficient authority to meet the need. Testimony given before the Subcommittee on the Environment revealed that approximately 35 States already have established extensive programs. Many of these already provide for the listing of endangered species, their legal protection, habitat protection, and related land acquisition. Nationwide, State agencies employ approximately 6,000 enforcement agents.

In contrast, the Federal Government, in fiscal year 1973, employed 158 enforcement agents, most of whom were located in ports of entry in order to enforce laws prohibiting the transport of endangered species in foreign commerce. It was found that if the Federal government were to embark on an attempt to manage and regulate endangered fish and wildlife nationwide, administration would necessarily be considerably extended. The Committee decided that the most effective way to fulfill the provisions of the Act was through delegation of authority to approved State agencies. Accordingly, the bill permits three courses of action: (1) The State may enter into a management agreement with the Secretary (section 6(b)); (2) the State may receive financial assistance if it "establishes and maintains an adequate and active program for the management, conservation, protection, and restoration of endangered and threatened species" (section 6(c)); (3) the State may have sole responsibility for the protection of endangered and threatened species of fish and wildlife if it establishes a plan for endangered and threatened species "in accordance with this Act" and such plan is approved by the Secretary (section 16). If a State meets the prerequisites for financial assistance from the Federal government, it may under a cooperative agreement receive as much as 50% of the total budget estimate for such a plan or agreement. For these purposes the bill authorizes the appropriation of $10,000,000. The Federal government shall retain its authority to regulate the interstate and foreign commerce of endangered species, whether or not it has established such agreements with the States.

OTHER PROVISIONS

ALASKAN NATIVES

It became apparent to the Committee in hearings that the case of the Alaskan native Indians, Aleuts, and Eskimoes required special attention. Certain native inhabitants depend on traditional hunting practices not only for sustenance but as a means for preserving social unity. Further, it was shown that their "take" was not the principal threat to the animals involved. Accordingly, S. 1983 does not apply with respect to the taking of any endangered or threatened species by such natives, provided that the action is for the purpose of consumption or use in a native community or for creation and sale of native articles of handicrafts and clothing, and is not accomplished in a wasteful manner. Application of the provisions of this section remains subject to the discretion of the Secretary under the terms and conditions set forth in the Act, who may revoke or regulate the exemption on the taking of endangered or threatened fish or wildlife with reference to species, isolated populations, season for taking, or geographical location.

CONVENTION IMPLEMENTATION

The Federal government has already acknowledged the need for international cooperation in the protection of endangered wildlife by entering into several agreements with other nations, including; migratory bird treaties with Canada and Mexico, a Migratory and Endangered Bird Treaty with Japan, and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. Accordingly, one of the purposes of the bill is to take all appropriate steps to implement the Nation's international commitments. To further this intent, the bill provides a means for implementation of the regulations of the Convention on International Trade in Endangered Species of Wild Fauna and Flora if and when that Convention is ratified by the Senate. The Convention met in February 1973 with 80 countries in attendance. "Practically all" of those given plenipotentiary power, including the representatives of the United States, signed the Convention. Under its provisions, a system of regulation designed to prevent the commercial overexploitation of any species of flora or fauna judged to be endangered or threatened by such trade is established. Provision is made for management and scientific authorities, and for a Secretariat to coordinate regulations and lists. The Committee found that such a centralized international authority would further the purposes of the Act regarding international cooperation. S. 1983, therefore, provides the means to establish the appropriate management and scientific authorities, one of which would establish communication between Convention and Federal authorities.

SMITHSONIAN STUDY

Recognizing the need for protection of the habitats of endangered species, as well as the need to protect endangered flora to preserve biological diversity, the Committee studied carefully the possibility of including plants within the protective provisions of the Act. However, it was discovered that there is not enough information available on situations of such endangered plants to bring plants within regulatory legislation. To help remedy this lack of information, the Act authorizes the Smithsonian Institution to conduct a review of species of endangered plants and authorizes $250,000 be appropriated for such study. A report of the conclusions of this study, together with legislative recommendations, shall be sent to the Congress within one year following the passage of the Act.

SECTION-BY-SECTION ANALYSIS

(1) Section 1 (Short Title)

The short title of this Act is the "Endangered Species Act of 1973"; the long and more descriptive title, which constitutes one of two Committee amendments, is "A Bill to provide for the conservation, protection, restoration, and propagation of species of fish, wildlife, and plants facing extinction, and for other purposes."

The other Committee amendment was in the nature of a substitute text, an analysis of which follows.

(2) Section 2 (Declaration of Policy)

In subsection (a) (Findings), the Congress finds that various species of fish and wildlife have become extinct and others are endangered by or threatened with extinction; that such species and their preservation is of value and a matter of concern to the United States for educational and scientific reasons and because the nation has made sovereign commitments by treaty with foreign nations to protect such species of fish and wildlife facing extinction. The Congress finds further that encouraging the States to develop and maintain endangered species programs is a key toward safeguarding the endangered and threatened species.

In subsection (b) (Purposes), the Congress declares that the purposes of this Act include providing an effective means to "conserve, protect, and restore the ecosystems" upon which these species depend; providing programs to conserve, protect, restore, and propagate these species; and insuring that all Federal agencies cooperate in protection efforts.

(3) Section 3 (Definitions)

"Convention", as defined in section 1(1), means the recently signed international convention with respect to international trade in "Endangered Species of Wild Fauna and Flora" and its appendices.

Section 3(2) defines an "endangered species" as one "which is in danger of extinction throughout all or a significant portion of its range". Section 3(13) defines a "threatened species" as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

"Fish or wildlife" is defined very broadly in section 3(3) to mean not only animals and fish and birds, but also any part of any such creature, alive or dead. There is a similarly broad definition of "plant" (section 3(7)).

There are definitions of "foreign commerce" (section 3(4)); person (section 3(6)) (includes a corporation or other such entity and any employee of any government); State (section 3(10)); and United States (section 3(14)).

"Import", as used in this Act and defined in section 3(5), has a broader meaning than the same term as used in the customs laws of the United States, including as it does an *attempt* to land on, bring into, or introduce into any place subject to United States jurisdiction, as well as an actual landing, bringing into, or introducing.

"Secretary", as defined in section 3(8), means either the Secretary of the Interior or the Secretary of Commerce depending upon the program responsibilities of each such Secretary under the 1970 Reorganization Plan.

Section 3(9) defines "species" to mean not only a species of fish or wildlife, but also any subspecies or other group of the "same species or lesser taxa in common spatial arrangement that interbreed when mature." Thus, for purposes of this Act, an endangered subspecies of wildlife is an endangered species.

"State agency" is defined in section 3(11) to mean the State agency or other entity within a State which is responsible for that State's program for management and conservation of fish and wildlife resources.

"Take" is defined in section 3(12) in the broadest possible manner to include every conceivable way in which a person can "take" or attempt to "take" any fish or wildlife.

(4) Section 4 (Determination of Endangered or Threatened Species)

This section sets forth the mechanism for determining and listing species of fish and wildlife which are endangered or threatened, and sets up machinery for the transition from the single list maintained today under the Endangered Species Act of 1969 to the two lists to be maintained under this Act.

Under subsection (a) (General), the Secretary can list a species as endangered or threatened "as a result of any" of five listed factors: curtailment of its habitat; overutilization; disease or predation; inadequacy of other regulatory mechanisms; and other "natural or manmade factors affecting its continued existence."

Subsection (b) (Basis for Determinations) sets up requirements for listing as either an endangered or a threatened species.

Subsection (c) (Lists) sets out the mechanics for listing or removing from a list, including publication in the Federal Register, a review under section 553 of title 5, United States Code if a petition is filed by an interested person provided the Secretary finds that such person has presented substantial evidence which in his judgment warrants such a review: The species on the endangered species list which is in existence when this Act becomes effective "shall be republished to conform to the appropriate classifications under this Act."

Subsection (d) (Advisory Committee) establishes a special committee to advise the Secretary on additions to, removals from, or reclassifications within the lists.

Subsection (e) (Protective Regulations) requires the Secretary, once he has listed a species of fish or wildlife as a threatened species, to issue regulations to protect that species. Among other protective measures available, he may make any or all of the acts and conduct defined as "prohibited acts" (in section 10(a)) as to "endangered species" also prohibited acts as to the particular threatened species. (The penalties for prohibited acts are declared in sections 12(a) (civil violation) and 12(b) (criminal violation)).

(5) *Section 5* (*Land Acquisition*)

This section gives the Secretary broad authority to acquire any real property ("land, waters, or interests therein") which he finds "necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species." He may use the land acquisition authority under other legislation in addition to the direct authority conferred by this Act, and he may use funds authorized and appropriated under the "Land and Water Conservation Fund Act of 1965" in addition to direct appropriations under this Act.

(6) *Section 6* (*Cooperation With the States*)

This section establishes mechanisms through which the Federal government and the governments of the States can work fruitfully together toward the mutually accepted goal of protection of endangered and threatened species.

Subsection (a) (General) directs the Secretary to "cooperate to the maximum extent practicable with the States." He is required to consult with a State before acquiring any real property in that State for purposes of protection of endangered or threatened species.

Subsection (b) (Management Agreements) authorizes the Secretary to agree with a State to manage, under a management agreement, any area established for such protective purposes.

Subsection (c) (Financial Assistance) authorizes financial-aid grants to the States for endangered and threatened species programs which meet the criteria set forth in this subsection. The prerequisites to Federal assistance are enumerated.

Subsection (d) (Allocation of Funds) sets out guidelines for the Secretary in dividing appropriated funds between the various eligible States and enumerates provisions regarding each such cooperative agreement for financial aid (e.g. Federal share shall not exceed 50% of the total estimated costs for a single State).

Subsection (e) (Periodic Review) requires annual review by the Secretary, including the consideration of comment from interested persons.

Subsection (f) (State Action Permitted) makes it clear that this Act shall in no way be construed to hold any State to a Federal standard which is lower or less protective of any endangered or threatened species, except for foreign commerce matters.

(7) *Section 7* (*Interagency Cooperation*)

All agencies, departments, and other instrumentalities of the Federal government are directed to cooperate in the implementation of the goals of this Act. Each agency shall, inter alia, take steps to "insure that actions authorized, funded, or carried out" by it do not jeopardize the continued existence of any such species or result in the destruction of its habitat.

(8) Section 8 (International Cooperation)

Subsection (a) (Financial Assistance) authorizes the President to provide assistance to endangered species programs using foreign currencies accruing to the United States in other nations subject to the provisions of section 1415 of the Supplemental Appropriation Act of 1953. However, no funds other than "counterpart" or "blocked" foreign currencies may be used for such purposes.

Subsection (b) (Encouragement) authorizes the Secretary, with the assistance of the Secretary of State, to encourage foreign countries to establish protective programs and to enter into bilateral or multilateral agreements for the protection, conservation, restoration, or propagation of endangered and threatened species, and to encourage citizens of such countries to practice conservation in taking fish or wildlife for importation into the United States.

Subsection (c) (Personnel) authorizes, after consultation with the Secretary of State, overseas assignment of personnel and expenditure of funds for specified programs.

Subsection (d) (Investigations) authorizes research and law enforcement investigations to be conducted overseas by the Secretary, after consultation with the Secretaries of State and Treasury.

Subsection (e) (Convention Implementation) directs the President to designate appropriate agencies to meet the Nation's implementation and enforcement responsibilities under the Convention.

(9) Section 9 (Regulations, Procedure, and Judicial Review)

Subsection (a) (Regulations) sets forth the requirements for the issuance of regulations by the Secretary under this Act.

Subsection (b) (Procedure) incorporates by reference the provisions of the Administrative Procedure Act, except for emergency action.

Subsection (c) (Judicial Review) authorizes limited judicial review of determinations by the Secretary under this Act.

(10) Section 10 (Unlawful Conduct)

Subsection (a) (Prohibited Acts) lists the conduct which is unlawful under this Act and punishable under section 12 (Penalties and Enforcement). The unlawful conduct includes, e.g., importing, exporting, taking, selling, distributing, or offering for sale in the United States any endangered species. The prohibited act is not limited to an entire animal, but includes any part of the dead body of any fish or wildlife which is listed pursuant to section 4 (see definition of fish and wildlife).

Subsection (b) (Similarity of Appearance Cases) authorizes the Secretary to deal with the problem presented by two species which are so similar in appearance that persons without specialized training cannot distinguish between them. If one is species listed under section 4, but the other is not, the Secretary may treat the unlisted species as an endangered or threatened species if such treatment "will substantially facilitate the enforcement and further the policy of this Act."

(11) Section 11 (Exceptions)

Subsection (a) (General) permits, upon approval, the importation, exportation, taking, or transportation of an endangered or threatened species for scientific purposes or the propagation of such species in captivity or in a controlled habitat.

Subsection (b) (Hardship) authorizes a limited hardship case exception for persons who have entered into contracts prior to the date a species is listed or proposed to be listed as an endangered or threatened species.

Subsection (c) (Procedure) requires an application, publication of notice, and review before the Secretary may grant a permit under subsection (a) or (b).

Subsection (d) (Alaska Natives) provides that the provisions of this Act shall not apply, with respect to an endangered or threatened species, to Indians, Aleuts, or Eskimos who take such fish or wildlife for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale authentic native articles of handicrafts and clothing, provided the taking is not done in a wasteful manner. As used in this subsection, the phrase "consumption or use in a native community" includes selling any edible portion of fish and wildlife in native villages and towns in Alaska for native consumption. By "native villages and towns in Alaska" the Committee intends to include any native village and any settlement or municipality in Alaska. By "native village" in the previous sentence, the committee means any tribe, band, clan, group, village, community, or association in Alaska which the Alaska Native Claims Settlement Act or the Secretary of the Interior finds eligible for land conveyances under subsection 14(a) of that Act. "Native village" also includes "native groups" as defined in subsection 3(d) of that Act. The term "native village" thus includes entities containing populations of more than 25 and also entities containing populations of less than 25. The Secretary may, however, with respect to endangered and threatened species set and prescribe detailed regulations.

(12) Section 12 (Penalties and Enforcement)

Subsection (a) (Civil Penalty) makes a knowing violation punishable by a civil penalty up to $10,000. Other violations may be punished by a penalty up to $1,000. Each prohibited act constitutes a separate violation. No such penalty may be assessed without notice and a hearing pursuant to section 554 of title 5, United States Code.

Subsection (b) (Criminal Violation) makes a knowing and willful violation punishable by a $20,000 fine and up to one year in prison, or both. In case of a criminal conviction, a person may also forfeit Federal hunting permits and other licenses.

Subsection (c) (Rewards) authorizes the Secretary to pay one-half of the amount of the penalty or fine paid to any person who furnishes information which leads to a civil penalty or conviction.

Subsection (d) (Enforcement) establishes mechanisms for enforcement and for forfeitures in case of violation.

Subsection (e) (Registration) requires each person who is an importer of fish or wildlife to register with the Secretary of the Treasury; to keep records; and permit inspection of these records.

Subsection (f) (Enforcement Regulations) authorizes the promulgation of enforcement regulations and the charging of reasonable fees for permits.

Subsection (g) (Citizen Suits) permits, subject to certain conditions, private actions to enforce the provisions of this Act.

Subsection (h) (Coordination) directs the Secretary and the Secretary of Agriculture to coordinate the administration of this Act with the administration of the animal quarantine laws, as well as for coordination in other possibly overlapping areas.

(13) *Section 13* (*Endangered Plants*)

The Smithsonian Institution is directed to review species of plants which are endangered or threatened and methods of providing adequate protection for such species. (Such methods might include adding plants to fish or wildlife within the general coverage of this Act). The Institution is directed to report its results and recommendations for legislation to Congress within one year, and funds, not to exceed $250,000, for such purpose are authorized to be appropriated.

(14) *Section 14* (*Conforming Amendments*)

The Act amends several existing statutes to conform with the terminology and provisions of this Act.

(15) *Section 15* (*Repealer*)

The Endangered Species Conservation Act of 1969 is repealed.

(16) *Section 16* (*Applicability Within States*)

Subsection (a) (State Plan) declares that a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance if it meets or exceeds the requirements set forth in section 6(c) and "represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife."

Subsection (b) (Determination by Secretary) provides for the Secretary to determine whether or not such a State plan is in accordance with this Act.

Subsection (c) (Periodic Review) directs the Secretary to review, not less than once every three years, performance within each State with an approved plan "to determine whether such plan is still in accordance with this Act, and to evaluate the success of such plan in terms of the policy of this Act."

Subsection (d) (No State Plan) provides that the provisions of this Act shall become applicable in their entirety within a State 15 months after the enactment date unless, prior to that date, the Secretary has made a determination that such State has not established a plan in accordance with this Act. If such a State later establishes an acceptable plan, such plan shall become effective and the provisions of this Act as to management and taking shall cease to have effect within that State.

Subsection (e) (Procedure) requires published notice and authorizes limited judicial review of a determination regarding a State plan.

Subsection (f) (Effective Date) provides that except for the State plan provisions of this section, the Act takes effect upon the date of enactment.

(17) *Section 17* (*Marine Mammals Act*)

In case of conflict, no provision of this Act shall take precedence over a more restrictive provision in the Marine Mammal Protection Act of 1972.

(*18*) *Section 18* (*Authorization for Appropriations*)

Appropriations are authorized for the next three fiscal years.

TEXT OF S. 1983, AS REPORTED

"A bill to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes." *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encourage the States, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and theatened fish and wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(2) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range.

(3) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(4) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(5) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduced into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(6) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(7) "Plant" means any member of the plant kingdom, including seeds, roots, and other parts of any such member.

(8) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of terrestrial plants, the term means the Secretary of Agriculture.

(9) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(10) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(11) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(12) "Take" means to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(13) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(14) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable ederal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) In determining whether or not any fish or wildlife is an endangered or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect within any area under its jurisdiction such fish or wildlife, whether by predator control, protection of habitat and food supply, or other conservation or management practices.

(3) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretary shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the lists maintained pursuant to subsection (a) of this section, and may, with the

approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than $150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) PROTECTIVE REGULATIONS.—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, or propagation of such species. With respect to any endangered or threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) this Act.

LAND ACQUISITION

SEC. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him; and

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation, protection, restoration, or propagation of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) FINANCIAL ASSISTANCE.—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the management, conservation, protection, and restoration of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs,

which are adequate, in the Secretary's judgment, for the conservation, protection, restoration, and propagation of species of fish or wildlife facing extinction;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of residual fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation, protection, restoration, and propagation of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) Allocation of Funds.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, research, censusing, law enforcement, and habitat acquisition or improvement. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the national significance of a species found to be endangered or threatened within a State; and

(C) the potential for preventing extinction of a species or for restoring a species to nonendangered or nonthreatened status.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year remain available for expenditure by such State until the close of the succeeding fiscal year.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66⅔ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated $10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation of the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, or propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign

countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scentific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) PROCEDURE.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: *Provided*, that the provisions of this section shall not apply to the extent necessary to permit emerging action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) JUDICIAL REVIEW.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, no stay of an action may be granted unless the reviewing court determines that the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary,

the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order.

(*d*) AUDIT.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

Sec. 10. (a) Prohibited Act.—Except as povided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce specimens or products processed or manufactured in whole or in part from specimens of any such species;

(6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulation which is promulgated by the Secretary pursuant to section 4(e) of this Act; or

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption or taken for recreational purposes in waters under United States jurisdiction or on the high seas. To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reason he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwiso provides.

(b) Similarity of Appearance Cases.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

SEC. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—

(1) scientific purposes in furtherance of the purposes of this Act; or

(2) the propagation of such species in captivity or in a controlled habitat.

(b) HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person who enters into a contract with respect to a species of fish or wildlife before the date of publication in the Federal Register of notice of a proposed listing of that species as an endangered or threatened species if the failure to grant such exception will cause undue economic hardship to such person under the contract. The extent and duration of such exception shall be such as the Secretary deems appropriate. No such exception shall be granted unless such person applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove such hardship. No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of a proposed listing of the involved species, nor shall such exception apply to a quantity of fish or wildlife in excess of that specified by the Secretary. The one-year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(c) PROCEDURE.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of

such endangered or threatened species and will be consistent with the policy of this Act.

(d) Alaska Natives.—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaskan native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic natives articles of handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical decription of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after notice and hearings in the affected judicial district of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

Sec. 12. (a) Civil Penalty.—(1) Any person who—

(A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation.

No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATIONS.—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreements authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection. The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation of any lease, license, permit, stamp, or other agreement.

(c) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(d) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife, or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act,

be exercised or performed by the Secretary or by such persons as he may designate.

(e) Registration.—(1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) Enforcement Regulations.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen Suits.—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles. No proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 13. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed $250,000.

CONFORMING AMENDMENTS

SEC. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species,".

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

> "THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."

and inserting in lieu thereof the following:

> "ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k–1), is amended to read as follows:

"SEC. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the protection of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section,

and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407 is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conseration Act of 1969" in section 102(b)(3) thereof and in-

serting in lieu thereof the following: "an endangered or a threatened Species pursuant to the Endangered Species Act of 973"; and

(4) by striking out "Endangered Species List," authorized by the Endangered Species Conservation Act of 1969." in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

REPEALER

Sec. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6) is repealed.

APPLICABILITY WITHIN STATES

Sec. 16. (a) State Plan.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) Determination by Secretary.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) Periodic Review.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) No State Plan.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: Provided, That the provisions of subsection (a) of section 10 of this Act shall be effective upon the date of enactment of this Act within any State which does not prevent the taking of any species listed by the Secretary as an endangered species. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the management and taking of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $3,960,000 for the fiscal year ending June 30, 1974; not to exceed $6,660,000 for the fiscal year ending June 30, 1975; and not to exceed $8,870,000 for the fiscal year ending June 30, 1976.

COST ESTIMATES

It is not possible to estimate with precision the cost of S. 1983. The Committee on Commerce estimates that the total cost, except for Sections 6 (Cooperation With the States) and 13 (Endangered Plants), of the endangered species programs under this bill would be:

For fiscal year ending:	*Million*
June 30, 1974	$3.96
June 30, 1975	6.66
June 30, 1976	8.87

No additional authority is granted to the Departments to obtain funds under the Land and Water Conservation Fund Act. Section 6 (d)(4) of the Act authorizes not to exceed $10.0 million to be appropriated for the purpose of funding the cooperative financial agreements between State governments and the Federal government. Section 13 of the Act authorizes not to exceed $250,000 to be appropriated for the purpose of a study by the Secretary of the Smithsonian Institution. The Committee knows of no other cost estimates at variance with its own.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 4(C) OF THE ACT OF OCTOBER 15, 1966 (16 U.S.C. 668dd(c))

"(c) No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law. [Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife, including endangered species thereof, on lands not within the System.] *With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system.* The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System."

SECTION 10(a) OF THE MIGRATORY BIRD CONSERVATION ACT (16 U.S.C. 715i(a))

"(a) Areas of lands, waters, or interests therein acquired or reserved pursuant to sections 1-5, 6, 7-12, and 15-19 of this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada, and other species of wildlife found thereon, including species that are **[**threatened with extinction**]** *listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species*, and to restore or develop adequate wildlife habitat."

SECTION 401(a) OF THE ACT OF JUNE 15, 1935 (16 U.S.C. 715S(a))

"(a) Separate fund in the United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System". . . . The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are **[**threatened with extinction**]** *listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species*, wildlife ranges, game ranges, wildlife management areas, and waterfowl areas established under any law, proclamation, Executive or public land order."

SECTION 6(a)(1) OF THE LAND AND WATER CONSERVATION FUND ACT OF 1965 (16 U.S.C. 4601-9(a)(1))

"(a) Moneys appropriated from the fund for Federal purposes shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President to the following purposes and subpurposes in substantially the same proportion as the number of visitor-days in areas and projects hereinafter described for which admission fees are charged under section 2 of this Act:

"(1) For the acquisition of land, waters, or interests in land or waters as follows: . . .

* * * * *

["THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction.**]**

"*ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants. . . .*"

SECTION 2 OF THE ACT OF SEPTEMBER 28, 1962 (16 U.S.C. 460k–1)

"[SEC. 2. In order to avoid adverse effects upon fish and wildlife populations and management operations of the said areas that might otherwise result from public recreation or visitation to such areas, the Secretary is authorized to acquire limited areas of land for recreational development adjacent to the said conservation areas in existence or approved by the Migratory Bird Conservation Commission as of the date of enactment of this Act: *Provided*, That the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps. Lands acquired pursuant to this section shall become a part of the particular conservation area to which they are adjacent.]

SEC. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

(1) incidental fish and wildlife oriented recreational development,

(2) the protection of natural resources,

(3) the protection of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

SECTION 3(1)(B) OF THE MARINE MAMMAL PROTECTION ACT (16 U.S.C. 1362) DEFINITIONS

"(1) The term 'depletion' or 'depleted' means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the [Endangered Species Conservation Act of 1969] *Endangered Species Act of 1973;* or

(C) is below the optimum carrying capacity for the species or stock within its environment."

SECTION 101(A)(3)(B) OF THE MARINE MAMMAL PROTECTION ACT (16 U.S.C. 1371)

"(B) Except for scientific research purposes as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which is classified as belonging to an endangered species [pursuant to the Endangered

Species Conservation Act of 1969] *or threatened species pursuant to the Endangered Species Act of 1973* or has been designated by the Secretary as depleted, and no importation may be made of any such mammal."

SECTION 102(b)(3) OF THE MARINE MAMMAL PROTECTION ACT (16 U.S.C. 1372(b)(3))

"(b) Except pursuant to a permit for scientific research issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock or which has been listed as [endangered under the Endangered Species Conservation Act of 1969] *an endangered or a threatened species pursuant to the Endangered Species Act of 1973;* or

(2) taken in a manner deemed inhumane by the Secretary."

SECTION 202(a)(6) OF THE MARINE MAMMAL PROTECTION ACT (16 U.S.C. 1402(a)(6))

SEC. 202. (a) The Commission shall—

". . . (6) recommend to the Secretary of the Interior such revisions of the [Endangered Species List, authorized by the Endangered Species Conservation Act of 1969] *endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973*, as may be appropriate with regard to marine mammals;' . . . ."

SECTIONS 1–3 OF THE ACT OF OCTOBER 15, 1966 (16 U.S.C. 668AA–668CC)

[An Act To provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the Congress finds and declares that one of the unfortunate consequences of growth and development in the United States has been the extermination of some native species of fish and wildlife; that serious losses in other species of native wild animals with educational, historical, recreational, and scientific value have occurred and are occurring; and that the United States has pledged itself, pursuant to migratory bird treaties with Canada and Mexico and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, to conserve and protect, where practicable, the various species of native fish and wildlife, including game and nongame migratory birds, that are threatened with extinction. The purposes of this Act are to provide a program for the conservation, protection, restoration, and propagation of selected species of native fish and wildlife, including migratory birds, that are threatened with extinction, and to consolidate, restate, and modify the present authorities relating to administration by the Secretary of the Interior of the National Wildlife Refuge System.

[(b) It is further declared to be the policy of Congress that the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Defense, together with the heads of bureaus, agencies, and services within their departments, shall seek to protect species of native fish and wildlife, including migratory birds, that are threatened with extinction, and, insofar as is practicable and consistent with the primary purposes of such bureaus, agencies, and services, shall preserve the habitats of such threatened species on lands under their jurisdiction.

[(c) A species of native fish and wildlife shall be regarded as threatened with extinction whenever the Secretary of the Interior finds, after consultation with the affected States, that its existence is endangered because its habitat is threatened with destruction, drastic modification, or severe curtailment, or because of overexploitation, disease, predation, or because of other factors, and that its survival requires assistance. In addition to consulting with the States, the Secretary shall, from time to time, seek the advice and recommendations of interested persons and organizations including, but not limited to, ornithologists, ichthyologists, ecologists, herpetologists, and mammalogists. He shall publish in the Federal Register the names of the species of native fish and wildlife found to be threatened with extinction in accordance with this paragraph.

[SEC. 2. (a) The Secretary of the Interior shall utilize the land acquisition and other authorities of the Migratory Bird Conservation Act, as amended, the Fish and Wildlife Act of 1956, as amended, and the Fish and Wildlife Coordination Act to carry out a program in the United States of conserving, protecting, restoring, and propagating selected species of native fish and wildlife that are threatened with extinction.

[(b) In addition to the land acquisition authorities in such Acts, the Secretary is hereby authorized to acquire by purchase, donation, or otherwise, lands or interests therein needed to carry out the purpose of this Act relating to the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

[(c) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) may be used for the purpose of acquiring lands, waters, or interests therein pursuant to this section that are needed for the purpose of conserving, protecting, restoring, and propagating selected species of native fish and wildlife, including migratory birds, that are threatened with extinction. Not to exceed $5,000,000 may be appropriated annually pursuant to that Act for such purpose for any fiscal year, and the total sum appropriated for such purpose shall not exceed $15,000,000: *Provided*, That the Secretary shall, to the greatest extent possible, utilize funds from the Land and Water Conservation Fund Act of 1965 for such purpose. Such sums shall remain available until expended. The Secretary shall not use more than $750,000 to acquire lands, waters, or interests therein for any one area for such purpose unless authorized by Act of Congress.

[(d) The Secretary shall review other programs administered by him and, to the extent practicable, utilize such programs in furtherance of the purpose of this Act. The Secretary shall also encourage other Federal agencies to utilize, where practicable, their authorities in furtherance of the purpose of this Act and shall consult with and assist such agencies in carrying out endangered species program.

SEC. 3. (a) In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the several States. Such cooperation shall include consultation before the acquisition of any land for the purpose of conserving, protecting, restoring, or propagating any endangered species of native fish and wildlife.

[(b) The Secretary may enter into agreements with the States for the administration and management of any area established for the conservation, protection, restoration, and propagation of endangered species of native fish and wildlife. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s).]

SECTIONS 1–6 OF THE ACT OF DECEMBER 5, 1969 (16 U.S.C. 66 SEC–1–1- -66 SEC–6)

[*An Act* To prevent the importation of endangered species of fish or widlife into the United States; to prevent the interstate shipment of reptiles, amphibians, and other widlife taken contrary to State law; and for other purposes.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, for the purposes of sections 2 through 5 of this Act, the term—

[(1) "Secretary" means the Secretary of the Interior;

[(2) "fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, products, egg, or offspring thereof, or the dead body or parts thereof;

[(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam; and

[(4) "person" means any individual, firm, corporation, association, or partnership.

[SEC. 2. Except as provided in section 3 of this Act, whoever imports from any foreign country into the United States any species or subspecies of fish or wildlife which the Secretary has determined, in accordance with the provisions of section 3 of this Act, to be threatened with worldwide extinction, shall be punished in accordance with the provisions of section 4 of this Act.

[SEC. 3. (a) A species or subspecies of fish or wildlife shall be deemed to be threatened with worldwide extinction whenever the Secretary determines, based on the best scientific and commercial data available to him and after consultation, in cooperation with the Secretary of State, with the foreign country or countries in which such fish or wildlife are normally found and, or to the extent practicable, with interested persons and organizations and other interested Federal agencies, that the continued existence of such species or subspecies of fish or wildlife is, in the judgment of the Secretary, endangered due to any of the following factors: (1) the destruction, drastic modification, or severe curtailment, or the threatened destruction, drastic modification, or severe curtailment, of its habitat, or (2) its overutilization for commercial or sporting purposes, or (3) the effect on it of disease or predation, or (4) other natural or man-made factors affecting its continued existence. After making such determination, the Secretary shall promulgate and from time to time he may revise, by regulation, a list in the Federal Register of such fish or wildlife by scientific, common, and commercial name or names, together with his determination. The Secretary shall at least once every five years conduct a thorough review of any such list to determine what, if any, changes have occurred relative to the continued existence of the species or subspecies of fish or wildlife then on the list and to determine whether such fish or wildlife continue to be threatened with worldwide extinction. Upon completion of such review, he shall take appropriate action consistent with the purposes of this Act. The Secretary shall, upon the request of any interested person, also conduct such review of any particular listed species or subspecies at any other time if he finds and publishes his finding that such person has presented substantial evidence to warrant such a review.

[(b) In order to minimize undue economic hardship to any person importing any species or subspecies of fish or wildlife which are determined to be threatened with worldwide extinction under this section, under any contract entered into prior to the date of publication of such determination in the Federal Register of such species or subspecies, the Secretary, upon such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, shall permit such person to import such species or subspecies in such quantities and for such periods, not to exceed one year, as he determines to be appropriate.

[(c) The Secretary may permit, under such terms and conditions as he may prescribe, the importation of any species or subspecies of fish or wildlife listed in the Federal Register under this section for zoological, educational, and scientific purposes, and for the propagation of such fish or wildlife in captivity for preservation purposes, unless such importation is prohibited by any other Federal law or regulation.

[(d) The provisions of section 553 of title 5 of the United States Code shall apply to any regulation issued under this section.

[SEC. 4. (a)(1) Any person who violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder, or any regulation issued under subsection (d) of this section, other than a violation the penalty for which is prescribed by subsection (b) of this section, shall be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed under this paragraph, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

[(2) Any employee authorized pursuant to subsection (c) of this section to enforce the provision of sections 2 and 3 of this Act, and any regulations or permits issued pursuant thereto or pursuant to subsection (d) of this section, shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any fish or wildlife or property or items taken, used, or possessed in connection with any violation of any such section, regulation, or permit with respect to which a civil penalty may be assessed pursuant to paragraph (1) of this subsection. Such fish, wildlife, property, or item so seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury pending disposition of proceedings by the Secretary involving the assessment of a civil penalty pursuant to paragraph (1) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit such person to post a bond or other surety satisfactory to the Secretary. Upon the assessment of a civil penalty pursuant to paragraph (1) of this subsection for any nonwillful violation of any such section, regulation, or permit, such fish, wildlife, property, or item so seized may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate. The owner or consignee of any such fish, wildlife, property, or item so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. Whenever any fish or wildlife or property or item is seized pursuant to this subsection, the Secretary shall move to dispose of the civil penalty proceedings pursuant to paragraph (1) of this subsection as expeditiously as possible. If, with respect to any such fish, wildlife, property, or item so seized no action is commenced in any court of competent jurisdiction to obtain the forfeiture of such fish, wildlife, property, or item within thirty days following the disposition of proceedings involving the assessment of a civil penalty, such fish, wildlife, property, or item shall be immediately returned to the owner or the consignee in accordance with regulations promulgated by the Secretary.

[(b) Any person who willfully violates any provision of section 2 or 3 of this Act or any regulation or permit issued thereunder or any regulation issued under subsection (d) of this section shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

[(c) The provisions of sections 2 and 3 of this Act and any regulations or permits issued pursuant thereto or pursuant to subsection (d) of this section shall be enforced by either the Secretary or the Secretary of the Treasury, or both such Secretaries. Either Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency or any State agency. Any employee of the Department of the Interior or the Department of the Treasury authorized by the Secretary or the Secretary of the Treasury may, without a warrant, arrest any person who such employee has probable cause to believe is willfully violating, in his presence or view, any such section, or any regulation or permit issued thereunder, the penalty for which is provided under subsection (b) of this section, and may execute a warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of such sections, regulations or permits. An employee who has made an arrest of a person in connection with any such willful violation may search such person at the time of his arrest and seize any fish or wildlife or property or items taken, used, or possessed in connection with any such violation, or any such employee shall have authority, in addition to any other authority provided by law relating to search and seizure, to execute any warrant to search for and seize any such fish, wildlife, property, or item so taken, used, or possessed. Any fish or wildlife or property or item seized shall be held by any employee authorized by the Secretary or the Secretary of the Treasury or by a United States marshal pending disposition of the case by the court, commissioner, or magistrate, except that the Secretary may, in lieu thereof, permit such person to post a bond or other surety satisfactory to him. Upon conviction, any (1) fish or wildlife seized shall be forfeited to the Secretary for disposal by him in such manner as he deems appropriate, and (2) any other property or items seized may, in the discretion of the court, commissioner, or magistrate, be forfeited to the United States or otherwise disposed of. The owner or consignee of any such fish, wildlife, property, or item so seized, shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary or the Secretary of the Treasury. If no conviction results from any such alleged violation, such fish, wildlife, property or item so seized in connection therewith shall be immediately returned to the owner or consignee in accordance with regulations promulgated by the Secretary, unless the Secretary, within thirty days following the final disposition of the case involving such violation, commences proceedings under subsection (a) of this section.

[(d) For the purposes of facilitating enforcement of sections 2 and 3 of this Act and reducing the costs thereof, the Secretary, with the approval of the Secretary of the Treasury, shall, after notice and an opportunity for a public hearing, from time to time designate, by regulation, any port or ports in the United States for the importation of fish and wildlife, other than shellfish and fishery products imported for commercial purposes, into the United States. The importation of such fish or wildlife into any port in the United States, except those so designated, shall be prohibited after the effective date of such designations; except that the Secretary, under such terms and conditions as he may prescribe, may permit importation at nondesignated ports for movement to designated ports of entry. Such regulations may provide other exceptions to such prohibition if the Secretary deems it appropriate and consistent with the purposes of this subsection.

[(e) In carrying out the provisions of sections 2 through 5 of this Act, the Secretary may issue such regulations as may be appropriate.

[SEC. 5. (a) In carrying out the provisions of sections 2 and 3 of this Act, the Secretary, through the Secretary of State, shall encourage foreign countries to provide protection to species and subspecies of fish or wildlife threatened with worldwide extinction, to take measures to prevent **any fish or wildlife** from becoming threatened with extinction, **and shall cooperate with such** countries in providing technical assistance in developing and carrying out **programs to provide** such protection, and shall, through the Secretary of State, encourage bilateral and multilateral agreements with such countries for the protection, conservation, and propagation of fish or wildlife. The Secretary shall also encourage persons, taking directly or indirectly fish or wildlife in foreign countries for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide under any authority available to him, conservation practices designed to enhance such fish or wildlife and their habitat. The Secretary of State, in consultation with the Secretary, shall take appropriate measures to encourage the development of adequate measures, including, if appropriate, international agreements, to prevent such fish or wildlife from becoming threatened with worldwide extinction.

[(b) To assure the worldwide conservation of endangered species and to prevent competitive harm to affected United States industries, the Secretary, through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to June 30, 1971, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.

[(c) There are authorized to be appropriated such sums, not to exceed $200,000, as may be necessary to carry out the provisions of subsection (b) of this section, such sums to remain available until expended.

[SEC. 6. (a) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act and amendments made by this Act, with the administration of the animal quarantine laws (21 U.S.C. 101 et seq., 21 U.S.C. 111, 21 U.S.C. 134 et seq.) and the Tariff Act of 1930, as amended (19 U.S.C. 1306).

[(b) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture.

[(c) Nothing in this Act, or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, as amended, including, without limitation, section 527 of said Act (19 U.S.C. 1527) relating to the importation of wildlife taken, killed, possessed or exported to the United States in violation of the laws or regulations of a foreign country.]

AGENCY COMMENTS

No comments on S. 1983 were received from any affected agency. The following comments were received on S. 1592:

DEPARTMENT OF STATE,
Washington, D.C., June 5, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of May 15, 1973, requesting the Department's comments on S. 1592, a bill to provide for the conservation, protection and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes.

The legislation was transmitted to the Congress in conjunction with the President's State of the Union Message on Natural Resources and Environment of February 15, 1973. This Department strongly supports S. 1592.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S. 1592 would be in accord with the Administration's program.

Sincerely,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., May 25, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1592, "To provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are presently threatened with extinction or likely within the foreseeable future to become threatened with extinction; and for other purposes."

The President, in his State of the Union Message of February 15, 1973, on Natural Resources and the Environment, stated that the limited scope of existing laws requires new authority to identify and protect endangered species before they are so depleted that it is too late and that he would ask the 93rd Congress to direct its attention to this problem. The Administration's proposal is contained in S. 1592.

In view of the foregoing, the Department recommends the enactment of S. 1592.

The Department was advised by the Office of Management and Budget that there was no objection to the submission to the Committee on Merchant Marine and Fisheries of a similar report on H.R. 758, an identical bill, and that enactment of this legislation would be in accord with the program of the President.

Sincerely yours,

SAMUEL R. PIERCE, Jr.
General Council.

[From the Congressional Record, July 24, 1973]

SENATE CONSIDERATION AND PASSAGE OF S. 1983, WITH AMENDMENTS

ENDANGERED SPECIES ACT OF 1973

The ACTING PRESIDENT pro tempore (Mr. Nunn). Under the previous order the Senate will proceed to the consideration of S. 1983, which will be stated by title.

The bill was stated by title as follows:

A bill (S. 1983) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(2) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range.

(3) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(4) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(5) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(6) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(7) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(8) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of terrestrial plants, the term means the Secretary of Agriculture.

(9) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(10) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(11) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(12) "Take" means to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(13) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(14) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) Basis for Determinations.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) In determining whether or not any fish or wildlife is an endangered or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect within any area under its jurisdiction such fish or wildlife, whether by predator control, protection of habitat and food supply, or other conservation or management practices.

(3) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) Lists.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) Advisory Committee.—(1) The Secretary shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than one each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the lists maintained pursuant to subsection (a) of

this section, and may with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than $150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) PROTECTIVE REGULATIONS.—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, or propagation of such species. With respect to any endangered or threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

SEC. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him; and

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, propagating any endangered or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation, protection, restoration or propagation of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) FINANCIAL ASSISTANCE.—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the management, conservation, protection, and restoration of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs, which are adequate, in the Secretary's judgment for the conservation, protection, restoration, and propagation of species of fish or wildlife facing extinction;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation, protection, restoration, and propagation of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, research, censusing, law enforcement, and habitat acquisition or improvement. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the national significance of a species found to be endangered or threatened within a State; and

(C) the potential for preventing extinction of a species or for restoring a species to nonendangered or nonthreatened status.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year remain available for expenditure by such State until the close of the succeeding fiscal year.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66⅔ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated not to exceed $10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation of the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, water, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) PROCEDURE.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: *Provided*, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) JUDICIAL REVIEW.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, on stay of action may be granted unless the reviewing court determines the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may notify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order.

(d) AUDIT.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records a will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

SEC. 10. (a) PROHIBITED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States—

(1) import into, or export from the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce specimens or products processed or manufactured in whole or in part from specimens of any such species;

(6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulation which is promulgated by the Secretary pursuant to section 4(e) of this Act; and

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish, or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption or taken for recreational purposes in waters under United States jurisdiction or on the high seas. To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearings, may, by regulations, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act is he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

EXCEPTIONS

SEC. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, **by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—**

(1) **scientific purposes in furtherance of the purposes of this Act; or**

(2) the propagation of such species in captivity or in a controlled habitat.

(b) **HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person who enters into a contract with respect to a species of fish or wildlife before the date of publication in the Federal Register of notice** of a proposed listing of that species as an endangered or threatened species if the **failure to grant such exception will cause undue economic hardship to such person under the contract. The extent and duration of such exception shall be such as the Secretary deems appropriate. No such exception shall be granted unless such person applies to the Secretary in writing and furnishes with such application** such information as the Secretary may require to prove such hardship. **No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of a proposed listing of the in**volved species, nor shall such exception apply to a quantity of fish or wildlife **in excess of that specified by the Secretary. The one-year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275).** No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(c) PROCEDURE.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such endangered or threatened species and will be consistent with the policy of this Act.

(d) ALASKA NATIVES.—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaska native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic native articles of handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species, and that such taking materially and negatively affects the threatened and endangered species. he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season

for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—

(A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation.

No penalty shall be assessed unless such person is given notice of an opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATIONS.—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection. The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation of any lease, license, permit, stamp, or other agreement.

(c) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(d) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish or wildlife, or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) REGISTRATION.—(1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shellfish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) Enforcement Regulations.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen Suits.—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other govermental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is dilligently prosecuting a criminal action in the court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) Coordination.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles. No proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

Sec. 13. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed $250,000.

CONFORMING AMENDMENTS

SEC. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species.".

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(a)(1)) is amended by striking out:

"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction." and inserting in lieu thereof the following:

"ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k-1), is amended to read as follows:

"SEC. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish- and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the protection of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraph (1) through (3) of this section,

and are adjacent to, or within, the said conservation areas, except that as acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefore by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1)(B) thereof and inserting in lieu thereof the followwing: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a) (3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973."

REPEALER

SEC. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6) is repealed.

APPLICABILITY WITHIN STATES

SEC. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: *Provided*, That the provisions of subsection (a) of section 10 of this Act shall be effective upon the date of enactment of this Act within any State which does not prevent the taking of any species listed by the Secretary as an endangered species. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the management and taking of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammals Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $3,960,000 for the fiscal year ending June 30, 1974; not to exceed $6.660,000 for the fiscal year ending June 3, 1975; and not to exceed $8,870,000 for the fiscal year ending June 30, 1976.

The ACTING PRESIDENT pro tempore. The time for debate on this bill will be limited to 1 hour, to be equally divided and controlled by the majority leader and the minority leader or their designees, with 30 minutes on any amendment, debatable motion, or appeal.

The Senator from California is recognized.

Mr. TUNNEY. Mr. President, I yield to the Senator from Alaska.

Mr. STEVENS. I only wanted to have stated the time situation. I shall handle the bill for the minority.

The ACTING PRESIDENT pro tempore. The Senators from California and Alaska, according to the understanding of the Chair, are the designees of the majority leader and the minority leader.

Who yields time?

Mr. TUNNEY. Mr. President, the Endangered Species Act of 1973 is a vital piece of legislation which is absolutely necessary to provide protection to our Nation's species of wildlife that are threatened with extinction.

The goal of the Endangered Species Act is to conserve, protect, restore, and propagate species of fish and wildlife, that are in imminent danger of extinction or are likely to become endangered within the foreseeable future. This bill employs several mechanisms to insure the accomplishment of this goal. They include provision of greater authority to the Secretaries of Interior and Commerce to list endangered or threatened animals, encouragement of further international cooperation for the protection of these animals, provision for the acquisition of habitat useful for the purposes of this act, and incentives for the establishment of effective endangered species programs by the several States.

There is an urgent need for this type of protective legislation. In our country alone, there are 109 species listed as endangered by the Secretary of the Interior. On his foreign list, there are over 300 species. Furthermore, the situation continues to worsen. The rate of extinction has increased to a point where, on the average, one species disappears every year.

This is an extremely disturbing trend. To allow the extinction of animal species is ecologically, economically, and ethically unsound. Each species provides a service to its environment; each species is a part of an immensely complicated ecological organization, the stability of which rests on the health of its components. At present, we are unsure of the total contribution of each species of fish and wildlife to the health of our ecology. To permit the extinction of any species which contributes to the support of this structure without knowledge of the cost or benefits of such extinction is to carelessly tamper with the health of the structure itself.

The existence of each species is also important to the growth of our scientific knowledge of man and his environment. Diversity of genetic types is necessary for thorough scientific knowledge. There is a yet unknown potential for investigation into these species' genetic structure which must remain unhindered if we wish to probe for further knowledge and the transfer of that knowledge into beneficial uses for man.

Finally, many of these animals simply give us esthetic pleasure. We like to view them in zoos and in their natural habitats. We, and our children, learn from these species about the diversity of our universe and the many forms of life which are necessary to support our bountiful and wonderful environment.

For these reasons, it is important that we adopt this act to protect our wildlife. In prior legislation we have taken several steps toward solution of the problem. In 1966 and in 1969, we provided the Secretary with the power to list species or subspecies of fish and wildlife that were threatened with extinction. Importation of these species from foreign countries was prohibited. Federal endangered wildlife reserves were encouraged by authorization of grants for land acquisition. However these provisions only gave limited protection to domestic endangered species; and the Federal grant program terminated last year. There is still no Federal prohibition against the taking of endangered species, still no widespread action to conserve and restore these animals, and the problem of the continuing extinction of species still exists.

The challenge before us now is to protect these species and their vital habitat and to restore their numbers to optimum levels. S. 1983 would accomplish this goal in several ways. First, it provides protection to a broader range of species by affording the Secretary the power to list animals which he determines are likely in the foreseeable future to become extinct, as well as those animals which are presently threatened with extinction. This gives the Secretary and the States which adopt endangered species management plans, the ability not only to protect the last remaining members of the species but to take steps to insure that species which are likely to be threatened with extinction never reach the state of being presently endangered.

The bill would thus hopefully, prevent a crisis situation from occurring for a number of species which would otherwise come close to extinction in future years. The two levels of classification facilitate regulations that are tailored to the needs of the animal while minimizing the use of the most stringent prohibitions. Since most of our resources for restoring and propagating species lie with the States, they are encouraged to use their discretion to promote the recovery of threatened species and Federal prohibitions against taking must be absolutely enforced only for those species on the brink of extinction.

To aid in the delicate and highly specialized task of listing these animals, the Secretary is required to appoint an advisory committee to assist him in the designation of endangered and threatened species.

To insure that the States that may be effected by the Secretary's designation are fully active through the listing process, the Secretary must consult with the States effected prior to listing any species. Furthermore, half the members of the advisory committee must be employed by State governments.

Many species have been inadvertently exterminated by a negligent destruction of their habitat. Their habitats have been cut in size, polluted, or otherwise altered so that they are unsuitable environments for natural populations of fish and wildlife. Under this bill, we can take steps to make amends for our negligent encroachment. The Secretary would be empowered to use the land acquisition authority granted to him in certain existing legislation to acquire land for the use of the endangered species programs. The bill also eliminates the restrictive ceiling which was placed on funds available to the Land and Water Conservation Fund Act by the Act of 1969. Through these land acquisition provisions, we will be able to conserve habitats necessary to protect fish and wildlife from further destruction.

Although most endangered species are threatened primarily by the destruction of their natural habitats, a significant portion of these animals are subject to predation by man for commercial, sport, consumption, or other purposes. The provisions in S. 1983 would prohibit the commerce in or the importation, exportation, or taking of endangered species except where permitted by the Secretary for scientific purposes in furtherance of the purpose of this act, or for the propagation of such species in captivity in a controlled habitat. Amendments which will be offered today, and which would greatly add to the purposes of this act would permit otherwise prohibited acts when they are undertaken to enhance the propagation or survival of the affected species or to prevent serious and otherwise unavoidable threats to human health or the environment.

In order to minimize economic hardship on persons who entered into contracts prior to the passage of the act, such persons are permitted for a limited period of time to engage in activities which would otherwise be in violation of the act.

Alaska Natives are allowed, under regulations to be adopted by the Secretary, to take animals for consumption or use in a native community or for the production of authentic native articles of handicraft or clothing.

Under the bill, the taking of an endangered species for their sale or movement in interstate or foreign commerce is forbidden. Violators of any prohibition under this bill will be liable for a civil penalty of up to $10,000. Knowing violators of the law will be liable for a criminal penalty of up to $20,000 and/or imprisonment for up to 1 year. The most important protective provisions of this bill are those which will improve the condition of existing species. These will be actions taken by the Secretary, the States, and individual citizens. However, we must extend some protection to animals subject to unrestrained predation.

Among the greatest contributions that have been made to the conservation, restoration, protection, and propagation of endangered and threatened species are the contributions made by private citizens. Exceptions to the prohibitions could be made by the Secretary wherever possible to encourage individual actions which will further the purposes of this act. Recent activities by the Secretary to prosecute individuals involved in harmless violations of prior acts which were part of programs designed to restore endangered species appear to have been taken counter to the purposes of our earlier legislation. Penalty provisions of this act are intended to be used to prevent activity which may be actually harmful to a species or its individual members and not merely to employ the law enforcement divisions of the departments.

I would like to discuss what is perhaps the most important section of this bill. Important because I believe it provides the most effective means to achieve the purposes of this bill. Undoubtedly, the threatened extinction of our wildlife is a national problem, necessitating involvement of the Federal Government. Endangered animals are not limited to any one area or State of the Nation so it is impossible for the individual States to limit their movement in interstate or foreign commerce. Furthermore, no one State should be responsible for balancing its interests, with those of other States, for the entire Nation. Central authority is necessary to oversee endangered species protection programs and to insure that local political pressures do not lead to the destruction of a vital national asset.

On the other hand, it was well established in the hearings record that most of the States possess much greater wildlife management resources than does the Federal Government. Clearly, any effort on the part of the Federal Government to encourage restoration of threatened or endangered species would fail without the assistance of the State agencies. This bill is designed to permit and encourage State endangered species programs that act in concert with the purposes of this act.

Subject to the provisions of this act which provide maximum protection for species on the brink of extinction, States with active endangered species programs are given full discretion to manage threatened species which reside within their boundaries. Under the bill, the States are given 1 year to submit plans to the Secretary for the establishment of agencies for the promulgation, conservation, restoration, and protection of resident endangered species. Provisions of this act governing the taking and management of endangered species go into effect 15 months after the passage of this act only for those States where the submitted plans have not been approved by the Secretary.

Further, States, whose plans have been approved by the Secretary, are eligible for a portion of the $10 million provided under this act for financial assistance to defer the cost of implementation. In the case where a State plan is not initially approved by the Secretary, and the Secretary must intervene to insure furtherance of the purposes of this act, a State may reapply at any time for approval of its plan. A State's power to manage endangered species is preempted only to the extent that such State does not prevent taking of endangered species—that is, species which are in imminent danger of extinction. Even in these cases, States whose plans have not been disapproved by the Secretary would have management powers not inconsistent with the prohibitions against taking.

The plan for Federal-State cooperation provides for much more extensive discretionary action on the part of the Secretary and the

State agencies. Under existing laws, a species must be declared "endangered" even if in a certain portion of its range, the species has experienced a population boom, or is otherwise threatening to destroy the life support capacity of its habitat. Such a broad listing prevents local authorities from taking steps to insure healthy population levels.

Under S. 1983, however, the Secretary may list an animal as "endangered" through all or portion of its range. An animal might be "endangered" in most States but overpopulated in some. In a State in which a species is overpopulated, the Secretary would have the discretion to list that animal as merely threatened or to remove it from the endangered species listing entirely while still providing protection in areas where it was threatened with extinction. In that portion of its range where it was not threatened with extinction, the States would have full authority to use their management skills to insure the proper conservation of the species. Also, upon passage of S. 1983, Federal prohibitions against taking would apply only in those States which did not prevent the taking of endangered species. Fifteen months after the passage of the act, the act's provisions would apply only in those States which had not adopted a management plan approved by the Secretary.

A well-known example may serve to illustrate how S. 1983 provides for maximum management and conservation discretion, while insuring absolute protection for species imminently in danger of extinction. The American alligator, which has been plagued by habitat destruction and commercial exploitation, is currently listed as an endangered species. However, due to increased population resulting in habitat destruction, the Louisiana Wildlife and Fisheries Commission ended total protection last year and conducted a closely regulated harvest in one parish of the State. According to the Department of the Interior, it is likely that in certain portions of Louisiana, the American alligator may be relisted under this bill as a threatened species. S. 1983 would permit continued State action to enhance the existence of this species. In other areas the alligator would remain listed as an endangered species and would be entitled to absolute Federal or State protection until a State plan was approved by the Secretary under the provisions of this act.

Should a State decide not to adopt an endangered species protection program, under this bill, as I propose it be amended, that State could always secure a permit from the Secretary to exempt animals from the prohibitions of this act in order to permit management of a species, then listed as endangered, to enhance the propagation or survival of the affected species. However, I hope that, as soon as possible after the passage of this act, all of the State will formulate plans for the management of resident endangered species and that these plans can be approved by the Secretary so that enlightened management programs can continue under the control of the States.

I feel that this bill provides the necessary national protection to severely endangered species while encouraging the States to utilize all of their resources toward the furtherance of the purposes of this act. State participation is necessary for the protection of endangered and threatened species. This bill provides them the authority and additional funds with which to provide that protection. Only those States who are unwilling to adopt endangered species protection programs to provide protection for species threatened with extinction need fear Federal preemption.

Finally, while we are concerned with our endangered domestic species, we must not forget the many animals that are in need of worldwide attention. S. 1983 includes the mechanisms of international cooperation that fulfill our commitments under international conventions for the protection of endangered species. This Nation has dedicated itself for international cooperation through several international treaties. S. 1983 extends this cooperation by permitting the President to use certain blocked Federal funds to provide assistance for the development of management programs in foreign countries, and to offer educational training for foreign personnel in wildlife management. The bill also permits loans for the development of protection agencies in foreign countries. And, the bill provides mechanisms for implementation of the Convention on International Trade and Endangered Species of Wild Flora and Fauna which was signed by representatives from the United States last March and is now pending ratification by the Senate.

As we consider this bill, we must remember the magnitude of the problem and the importance of our concern. We are dealing with the future of many species of fish and wildlife—species which in many cases we have placed near extinction from carelessness and a lack of understanding of their importance. These animals are part of our natural resources, part of our history, and part of our evolutionary heritage. We have a duty to restore what we have endangered—for ourselves and for posterity.

This bill is a step toward that necessary restoration. I urge Senators' favorable consideration.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. STEVENS. Mr. President, I am pleased to support the Endangered Species Act of 1973.

While the bill is not perfect, I believe it takes a major step in the protection of American endangered and threatened species. It will provide for the conservation of endangered fish and wildlife by prohibiting the taking of these species and also by encouraging the establishment of State programs. It retains the present bifurcation of responsibility between the Departments of Interior and Commerce over different species. It extends protection to species which are either endangered or likely to become endangered within the foreseeable future. It expands the protection of the Endangered Species Conservation Act of of 1969 (85 Stat. 275). That act mainly prohibited the importation of foreign species. This legislation extends protection to domestic species. That act also implemented State statutes. This act will permit national listings of species as either endangered or threatened and also impose Federal prohibitions on their taking.

This legislation was the subject of extensive hearings last Congress in the Senate Environment Subcommittee. The former Senator from Virginia (Mr. Spong) and I heard a number of knowledgeable witnesses from governmental agencies and also from various private groups. They were, almost uniformly, of the opinion that such legislation was necessary for the protection of endangered species.

As former Senator Spong said: "Extinction is quite literally a fate worse than death."

I agree.

This bill is designed to provide the Secretary of the Interior and the Secretary of Commerce with the authority to list a species as either endangered or threatened if its habitat or range is threatened with destruction, it is overutilized and taken in great numbers, it is the victim of disease or predation, it is out of balance with its environment, or natural or manmade factors adversely affect its continued existence.

The Secretaries must use the best scientific data to make this determination. They are to consult with all necessary persons and are to publish such a list in the Federal Register. They may periodically review this list upon the petition of any interested party.

For this purpose they are to establish an advisory committee on endangered and threatened species. This advisory committee was recommended by the State departments of fish and game to give them additional input. It will insure that the Secretaries have the very best possible advice before they list any species or delist it.

Section 5 is particularly important. Under it they are to establish particular programs to protect and conserve fish and wildlife listed as endangered and threatened. They are to acquire land for this purpose and may also utilize other Federal lands for this purpose.

Section 6 and 16 provide for cooperation with the States. They provide the major backbone of the act. Presently the States have an extensive network of endangered species legislation. Unfortunately, not all States have as yet implemented such programs. This bill will assist those States not yet involved to implement such programs and will, if the States do not, provide for Federal preemption.

Typical are the laws of Alaska, Illinois, and Texas. Alaska, for example, requires the State government to preserve the natural habitat of species or subspecies of fish and wildlife that are recognized as threatened with extinction. The language is very similar to S. 1983. The Alaska State commissioner of fish and game is required to seek the advice and recommendations of biological experts. Before anyone may take an endangered animal, he must obtain a special permit from the commissioner of fish and game which may only be given "for scientific or educational purposes, or for propagation in captivity for the purpose of preservation." The State statute also provides criminal penalties for anyone violating it.

I ask unanimous consent to have printed in the Record at this point the text of the Alaska State endangered species law.

There being no objection, the text was ordered to be printed in the Record, as follows:

ARTICLE 4. ENDANGERED SPECIES

Section

180. Declaration of purpose
185. Protection of habitat
190. Determining endangered species
195. Permit for taking endangered species
200. Penalty
210. Definitions

Sec. 16.20.180. Declaration of purpose. The legislature recognizes that, due to growth and development, certain species or subspecies of fish and wildlife are now and may in the future be threatened with extinction. The purpose of §§ 180-210 of this chapter is to establish a program for their continued conservation, protection, restoration and propagation. (§ 1 ch 115 SLA 1971)

Sec. 16.20.185. Protection of habitat. On land under their respective jurisdictions, the commissioner of fish and game and the commissioner of natural resources shall take measures to preserve the natural habitat of species or subspecies of fish and wildlife that are recognized as threatened with extinction. (§ 1 ch 115 SLA 1971)

Sec. 16.20.190. Determining endangered species. (a) A species or subspecies of fish or wildlife is considered endangered when the commissioner of fish and game determines that its numbers have decreased to such an extent as to indicate that its continued existence is threatened. In making this determination the commissioner of fish and game shall consider

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) its overutilization for commercial or sporting purposes;

(3) the effect on it of disease or predation;

(4) other natural or man-made factors affecting its continued existence.

(b) After making a determination under (a) of this section, the commissioner of fish and game shall, in accordance with the Administrative Procedure Act (AS 44.62), publish a list of the species or subspecies of fish and wildlife that are endangered. The commissioner shall, at least once every two years thereafter, conduct a thorough review of the list to determine what changes have occurred concerning the species or subspecies listed. Consideration of existing species or subspecies of fish and wildlife for listing under this section shall be made on a continuing basis. The review of listed species or subspecies conducted under this section shall be submitted in writing to the governor and the legislature and shall be made available to the public.

(c) In making his determination and review under (a) and (b) of this section, the commissioner of fish and game shall seek the advice and recommendation of interested persons and organizations, including but not limited to ornithologists, ichthyologists, ecologists and zoologists. (§ 1 ch 115 SLA 1971)

Sec. 16.20.195. Permit for taking endangered species. No species or subspecies of fish or wildlife listed as endangered under § 190(b) of this chapter may be harvested, captured or propagated except under the terms of a special permit issued by the commissioner of fish and game for scientific or educational purposes, or for propagation in captivity for the purpose of preservation. (§ 1 ch 115 SLA 1971)

Sec. 16.20.200. Penalty. A person who, without a permit issued under § 195 of this chapter, harvests, injures, imports, exports, or captures a species or subspecies of fish or wildlife listed under § 190 of this chapter, is guilty of a misdemeanor. (§ 1 ch 115 SLA 1971)

Sec. 16.20.210. Definitions. In §§ 180–210 of this chapter "fish or wildlife" includes birds. (§ 1 ch 115 SLA 1971)

Mr. STEVENS. The Illinois State statute lists a number of domestic and foreign species and makes it unlawful to "possess, sell, order for sale, give or dispose of any animal or the wild animal product of any animal which is an endangered species under this act" without obtaining a permit. Such permits may be given only for "zoological, educational or scientific purposes." It provides for fines and imprisonment for persons violating this act.

Mr. President, I ask unanimous consent that the text of the Illinois Endangered Species Act be printed in the Record at this point.

There being no objection, the text was ordered to be printed in the Record, as follows:

ILLINOIS ENDANGERED SPECIES ACT

An Act to prohibit the transfer, sale and possession of products or skins of animals in danger of extinction, to create a Board to determine which species are endangered and to provide penalties for the violation thereof, and to make an appropriation therefor.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act shall be known and may be cited as the "Illinois Endangered Species Protection Act."

Section 2. As used in this Act the following words have the following meanings:

"Board" means the Endangered Species Protection Board created by this Act.

"Department" means the Department of Conservation and "Director" means the director of that Department.

"Endangered Species" means the species of animals listed in this Section plus such other species as the Board deems to be in danger of extinction. This includes but is not limited to the following species: leopard, Panthera pardus; snow leopard, Panthera unica; clouded leopard, Neofelis nebulosa; tiger, Panthera tigris, cheetah, Acinonyx jubatus; alligators, caiman, crocodiles and all other members of the order crocodylia; vicuna, Vicugna vicugna; red wolf, Canis niger; gray wolf, Canis lupus; polar bear, Thalarcotos martimus; mountain lion, sometimes called cougar, Felis wiedii; desert kit fox, Vulpes macrotis; kit or swift fox, Vulpes velox; Pacific Ridley turtle or warana, Lepidochelys olivacea; or green turtle, Chelonia mydas.

"Wild animal product" means the fur, hide, skin, teeth, feathers, tusks, claws or the body or any portion thereof whether in a green or raw state or as a product manufactured or refined from an animal protected under this Act or under regulations issued pursuant to this Act.

Section 3. After January 1, 1973, it is unlawful to possess, sell, order for sale, give or dispose of any animal or the wild animal product of any animal which is an endangered species under this Act, without a permit therefor issued by the Department.

Section 4. Upon proper application, the Department shall issue to any person, firm, association or corporation a permit which allows the possession, purchase and disposal of live animals or wild animal products of an endangered species for zoological, educational or scientific purposes only. Such permit shall be issued without fee. The holder of such permit and all applicants therefor shall submit a list of all animals and wild animal products of endangered species owned or in their possession when ordered by the Director, but no more than annually. The Director may, upon notice and hearing, revoke the permit of any holder thereof upon his failure to file the reports required by this Section or the filing of a knowingly false report or the use of any wild animal product or animal of an endangered species for any purpose other than an educational, zoological or scientific purpose.

Section 5. Upon proper application, the Department shall issue a limited permit to any person, firm, association or corporation which had in its possession prior to the effective date of this Act, wild animal product of an endangered species. Such permit shall specifically name and describe each wild animal product possessed by the permit holder and shall be valid only for possession of the products so named. The Department may require proof that acquisition of such wild animal was made before the effective date of this Act. Such permit shall be valid as long as the product is in existence. The limited permit may be revoked by the Director for any violation of this Act.

Section 8. Any officer or agent authorized by the Department or Conservation, or any police officer of any municipality within the State of Illinois, may execute any warrant to search for and seize any goods, merchandise or wildlife sold or offered for sale in violation of this Section, or any property or item used in connection with a violation of this Section. Such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

Section 9. Any person who violates any provision of this Act shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than one year in a penal institution other than the penitentiary, or both.

Section 10. All fines collected under this Act shall be paid to the State Treasurer and deposited in the Game and Fish Fund.

Mr. STEVENS. A third example is the Texas Endangered Species Act. This was signed into law this May. It implements the present Federal statutes and also closely follows the wording of S. 1983. It requires permits before any species may be taken for zoological or scientific purposes if that species has been classified as endangered. It also provides criminal penalties.

Mr. President, I ask unanimous consent that the text of the Texas Endangered Species Act be printed in the Record at this point.

There being no objection, the text was ordered to be printed in the Record, as follows:

TEXAS ENDANGERED SPECIES BILL

An act relating to the conservation, management, protection, propagation, sale, and use of nongame fish and wildlife species; relating to the classification of certain fish and wildlife as endangered species, and the protection, propagation, sale, and use of endangered species and products of endangered species; providing penalties for violations; and declaring an emergency

Be it enacted by the Legislature of the State of Texas:

Section 1. Definitions.—As used in this Act:

(1) "Director" means the executive director of the parks and wildlife department.

(2) "Department" means the parks and wildlife department.

(3) "Fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, offspring, dead or alive, of a wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean.

(4) "Person" means any individual, firm, corporation, association, or partnership.

(5) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and the maintaining of such levels. The term "management" likewise includes the entire range of activities constituting a full scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

Sec. 2. Nongame species. (a) The department shall conduct investigations on nongame fish and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determination, the department shall issue proposed regulations not later than one year from the effective date of this Act and develop management programs designed to insure the continued ability of nongame fish and wildlife to perpetuate themselves successfully. The proposed regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The department shall conduct ongoing investigations of nongame fish and wildlife and may from time to time amend such regulations by adding or deleting therefrom species or subspecies of nongame wildlife.

(b) The department shall by regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage nongame fish and wildlife. The regulations shall become effective 60 days after being proposed and during that period public comment shall be solicited. The department shall hold a public hearing, notice of which shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. On the basis of public comments received or the testimony at a hearing the department may make such changes in the proposed regulations as are consistent with effective management of nongame fish and wildlife.

Sec. 3. Endangered species. Fish or wildlife are classified as endangered species if they appear on:

(1) the present United States List of Endangered Foreign Fish and Wildlife (50 C.F.R. Part 17, Appendix A);

(2) the present United States List of Endangered Native Fish and Wildlife (50 C.F.R. Part 17, Appendix D); or

(3) the list filed by the director under this Act of fish or wildlife threatened with statewide extinction.

Sec. 4. Statewide extinction. Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered in this state due to any of the following factors:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) the over-utilization of it for commercial or sporting purposes;

(3) the effect on it of disease or predation; or

(4) other natural or man-made factors affecting its continued existence.

Sec. 5. Initial classification by director. Within 45 days after the effective date of this Act, the department shall file with the secretary of state a proposed list of fish or wildlife threatened with statewide extinction. This list shall become effective on the 45th day after the date it is filed. Before the effective date of the proposed list, the department shall hold a public hearing on the proposed list. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. The proposed list may be amended prior to its effective date.

Sec. 6. Classification amendment by director. (a) If the federal lists set out in Section 3 of this Act are subsequently altered, the director shall file an order with the secretary of state accepting the alteration. The order is effective immediately.

(b) The department may amend the list filed under Section 5 of this Act by filing an order with the secretary of state. Notice of the intent to file the order and the contents of the proposed order must be given 60 days prior to the date of filing. If petition procedures set out in Section 7 of this Act are initiated relating to the contents of the proposed order during the 60-day notice period, the order may not be filed until the conclusion of the proceedings. The order is effective on the date of filing.

Sec. 7. Petition for reclassification. (a) On the petition of three interested persons presenting substantial scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction, the department may conduct a review of the classification and file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(b) If the department refuses to conduct a review of the classification of fish or wildlife threatened with statewide extinction under Subsection (a) of this section, a petition of 50 interested persons presenting scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction may be presented to the department. On receipt of this petition, the department must hold a public hearing to review the classification. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. Based on findings from the public hearing, the department may file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(c) Orders filed under this section are effective immediately.

Sec. 8. Use of name for sale. No person may advertise, offer for sale, or sell any other species of fish or wildlife under the name of any fish or wildlife classified as an endangered species.

Sec. 9. Permit to take certain fish or wildlife. (a) No person may take, possess, or transport fish or wildlife classified as endangered species for zoological gardens or scientific purposes or take or transport fish or wildlife classified as endangered species from the wild or from their natural habitat for propagation for commercial purposes, unless he has obtained a permit under Article 913, Penal Code of Texas, 1925, as amended, or under a federal permit.

(b) A permit may not be granted under Article 913, Penal Code of Texas, 1925, as amended, if the taking, possessing, or transporting of the fish or animal classified as an endangered species is specifically prohibited by federal law.

(c) The department may refuse to grant a permit to take or transport fish or wildlife classified as an endangered species from the wild or from their natural habitat for propagation for commercial purposes if the fish or wildlife may be legally obtained from a source in this state other than the wild or its natural habitat.

(d) Fish or wildlife classified as an endangered species shall be considered and included within the meaning of "protected fish or wildlife" as that term is used in Article 913, Penal Code of Texas, 1925, as amended.

(e) Failure to comply with this section is a violation of this Act. Failure to comply with the terms of a permit issued under Article 913, Penal Code of Texas, 1925, as amended, is a violation of that article.

(f) The provisions of this Act do not apply to the possession of mounted or preserved endangered species by public or private nonprofit educational, zoological, or research institutions held prior to the effective date of this Act. The department may require such institutions to furnish a list of mounted or preserved endangered species which they hold, together with adequate proof of the time of acquisition.

SEC. 10. Propagation. No person may possess fish or wildlife classified as endangered species for the purpose of propagating them for sale unless he has obtained a commercial propagation permit issued under this Act.

SEC. 11. Original commercial propagation permit. (a) An applicant for an original commercial propagation permit must submit to the department the permit fee of $300 and an application containing information or statements required by the department.

(b) The department shall issue an original commercial propagation permit to an applicant on compliance with Subsection (a) of this section if the department is satisfied that the fish or wildlife to be used for initial breeding stock was acquired by the applicant for commercial propagation purposes under Section 9 of this Act, federal rules, regulations, or permits, or from a person or source authorized to possess, sell, or dispose of the fish or wildlife under the laws of this state, another state, or federal law.

(c) Each original commercial propagation permit which is issued shall contain a description of the fish or wildlife classified as an endangered species which may be possessed by the permit holder.

(d) An original commercial propagation permit expires one year from the date of issuance.

SEC. 12. Renewal commercial propagation permit. (a) The department shall renew a commercial propagation permit on receipt of an application and the $550 renewal fee prior to or within 10 days of the expiration date of the permit.

(b) A renewal commercial propagation permit expires three years from the date of issuance and may be renewed under the same conditions as renewal of the original permit.

(c) The department may refuse to renew any permit when it is deemed to be in the best interest of the species.

SEC. 13. Duty of permittee. A person holding a commercial propagation permit must submit annually to the department:

(1) a written report by a veterinarian licensed to practice in this state containing an evaluation of the physical conditions of the propagation facilities and the condition of the fish or wildlife held by the permit holder; and

(2) a written report by the permit holder on forms prepared by the department relating to the general propagation activity during the previous year.

SEC. 14. Refusal of cancellation of permit. (a) If, on the basis of the reports required by Section 13 of this Act or from an investigation or inspection of an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and the fish or wildlife need immediate protection, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

SEC. 15. Appeal. (a) A person whose application for a commercial propagation permit or for renewal of a commercial propagation permit has been refused by the department or whose permit has been cancelled may take an appeal within 20 days from the date of refusal to any district court of Travis County or to any district court of the county of his residence.

(b) A case reviewed under this provision of this section proceeds in the district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of the district court lies as in other civil cases.

SEC. 16. Disposition of fish or wildlife. A person who holds a commercial propagation permit and fails to renew the permit or his renewal application is denied, or whose permit is cancelled under Section 14 of this Act, must dispose of the fish or wildlife held under Section 14 of this Act, must dispose of the fish or wildlife held under the permit and any increase in the fish or wildlife in the manner specified by the department.

SEC. 17. Rules and regulations. The department shall make rules and regulations to administer the provisions of this Act including:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying fish or wildlife classified as endangered species which may be possessed, propagated, or sold under the provisions of this Act;

(4) publication and distribution of lists of the species or subspecies of fish or wildlife or products of fish or wildlife classified as endangered species; and

(5) other rules and regulations necessary to attain the objectives of this Act.

SEC. 18. Disposition of Funds. Money received from the issuance of permits under this Act or from violations of this Act shall be deposited by the department in the state treasury to the credit of the general revenue fund.

SEC. 19. Sale of fish or wildlife classified as endangered species. (a) No person may sell, process, offer for sale, advertise for sale, or distribute fish or wildlife classified as endangered species unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(b) No person may sell, process, offer for sale, advertise for sale, or distribute goods made from fish or wildlife classified as endangered species unless the goods were made from fish or wildlife which were lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(c) Fish or wildlife classified as endangered species or goods made from fish or wildlife classified as endangered species sold under this section must be tagged or labeled in a manner to indicate compliance with this section.

SEC. 20. Exemptions. The provisions of this Act do not apply to coyotes (prairie wolves), cougars, bobcats, prairie dogs or red foxes.

No provision of this Act shall apply to any animals, fish or fowl which are privately owned animals, fish or fowl by the private owners of such animals, fish or fowl.

SEC. 21. Enforcement. (a) The Provisions of this Act shall be enforced by the department.

(b) Any commissioned peace officer in this state, including game management officers commissioned as peace officers in this state may execute a warrant to search for and seize fish or wildlife or goods made from fish or wildlife taken, sold, or possessed in violation of this Act or the rules and regulations issued under this Act.

(c) An officer who has made an arrest of a person for a violation of this Act or the rules and regulations issued under this Act may search the person at the time of arrest and seize fish or wildlife, or goods made from fish or wildlife, taken, possessed, or made in connection with a violation of this Act or the rules and regulations issued under this Act.

(d) Fish or wildlife, or goods seized under this section shall be delivered to the department and held by the department pending disposition of court proceedings. Subsequent to the disposition of court proceedings, the department shall dispose of fish or wildlife, and goods in accordance with rules and regulations established by the department. Any costs of maintenance for fish or wildlife seized under this section incurred by the department during the pendency of court proceedings may be assessed to the defendant.

SEC. 22. Penalty. A person who violates a provision of this Act or a rule or regulation issued under this Act is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than $100 nor more than $200. A person who is convicted for a second violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than $200 nor more than $500, or confinement in the county jail for not less than 30 days nor more than 90 days, or both. A person who is convicted for a third or subsequent violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than $500 nor more than $2,000, and confinement in the county jail for not less than six months nor more than one year.

SEC. 23. Conflict of laws. Any species or subspecies of fish or wildlife classified as an endangered species shall be governed exclusively by the provisions of this Act and no other regulatory or licensing laws of this state shall be applicable. This Act does not repeal Article 913, Penal Code of Texas, 1925, as amended.

Sec. 24. Funding. Funds for the administration of this Act may be appropriated from the general revenue fund by legislative appropriation.

Sec. 25. Issuance of permits on effective date. Any person who is engaged in the business of commercial propagation of a species of fish or wildlife classified as an endangered species on the effective date of this Act, may obtain a permit under Section 11 of this Act regardless of the method in which the fish or wildlife were initially obtained. Application for a permit under this section must be submitted within 120 days from the effective date of this Act.

Sec. 26. Effective date. Subsection (b) of Section 19 of this Act shall become effective September 1, 1974.

Sec. 27. Emergency. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act shall take effect and be in force according to its provisions, and it is so enacted.

Mr. Stevens. These then are but three examples of the many State laws on the subject.

As Dr. Ralph MacMullan, president of the International Association of Game, Fish, and Conservation Commissioners, stated last year in hearings before our subcommittee, State wildlife agencies employ presently over 5,800 enforcement officers across the Nation. Formal endangered species programs are being implemented in over 30 States. The three I have just had printed in the Record are but examples.

The International Association of Game, Fish, and Conservation Commissioners have promulgated a model State bill relating to funding and authorization for improved nongame and endangered species programs. This is set forth on pages 164–168 of the hearing record, S. 92–81 of the Senate Commerce Committee. I will not ask that that be reprinted, but merely incorporated by reference.

But even Dr. MacMullen believed that the Federal Government has a definite role in this area to insure that minimum standards are set and to assist the States in their responsibility for managing resident species.

Dr. MacMullen indicated that there are only two Federal enforcement people in Michigan and there are 200 full-time conservation officers and another 200 part-time employees in the same State in 83 counties. In other words, in Michigan there are an average of over two full-time conservation officers plus a number of other peace officers in each county to enforce State laws. These State and local law enforcement officials enforce Federal as well as State laws. He said "we perform the legwork." This is true nationwide. He also indicated that if the Federal Government were to take away the right of the States to manage these species and to preempt the States, State legislatures would not be willing to appropriate the necessary funds to protect endangered species.

This is, as a practical matter, what has happened in the ocean mammal bill. The Federal Government has preempted the States and has not provided enough money to manage the program. Thus there is no enforcement agency to protect ocean mammals. This is the reason that the Endangered Species Act of 1973 provides for a larger role for States and why there has been less opposition to it. I strongly support this trend.

Sections 6 and 16 of this legislation require the Secretaries to consult with the States before the acquisition of any lands, waters or interests therein for the protection of an endangered species. Cooperative agreements may be entered into. Financial assistance may be given to the States for this purpose. Specific requirements for the States are listed. Periodic review is required also. Section 16 specifically provides that by the end of the first year after the date of enactment each State may establish a plan in accordance with this act to protect endangered and threatened species. The Secretary must make a determination as to whether the plan meets the requirements of the act. Periodic review is also required. States are given 15 months to conform their statutes to the provision of this act. If not, they are subject to Federal preemption. I shall offer an amendment shortly to improve this section.

Financial assistance and encouragement of international efforts in the conservation of endangered species are also encouraged. This is particularly important for many of the migratory species involved.

Stringent prohibitions against unlawful taking or importation are also included.

There is set forth a specific exception for undue economic hardship. Because of certain technical problems with this section, I shall speak on it at some length when I offer an amendment on this later this morning.

There is also a specific exception for Alaska Natives. This was written utilizing the Marine Mammal Protection Act of 1972 (86 Stat. 1027) as a guide and was reviewed in detail with my staff and is entirely agreeable to me. I believe it provides the protection necessary for Alaskan Natives. Many of the technical changes were made as a result of certain problems we have found in the implementation of the marine mammal bill and certain questions that have subsequently been raised by those agencies in enforcing that act. Hopefully this will eliminate many of these ambiguities and will also, I intend, clarify our original interpretation of the Marine Mammal Protection Act.

It was my specific intent in this subsection to obviate the problems I mentioned in my several letters to the Departments of the Interior and Commerce on the Marine Mammal Protection Act. By passing this section, the Senate will be again indicating our congressional intent on each of these points.

Section 17 discusses the relationship of this act with the Marine Mammal Protection Act. A similar provision is found in section 11(d). It is important to note that certain of the provisions in that subsection will affect marine mammals and that, as specified in that subsection, they will take precedence over the Marine Mammal Protection Act of 1972.

One final point, last year at my request this legislation was not taken up on the Senate floor after being reported out of the Senate Commerce Committee.

That report, S. 92–1136, set forth my supplemental views also. I did not oppose this legislation at that time and I do not now. As I stated then: "I agree with the majority of the committee that legislation embodying the concepts in this bill is necessary."

I went on to state that time remaining in that congressional session was too short to permit the care and deliberation essential to the drafting and passage of legislation of this magnitude. The necessary time and care has since been spent. I believe we have a good bill in S. 1983 and am very pleased to have been designated the Republican floor manager for it.

Mr. President, in the United States there are 109 species and subspecies of wildlife—14 mammals, 50 birds, 7 reptiles, and 30 fish species—now threatened with extinction. These include such animals as the black-footed ferret, the whooping crane, the eastern timber wolf, the masked bobwhite, the ivory-billed woodpecker, and peregrine falcons. These are only domestic endangered species and do not include foreign endangered species.

Of this number, eight species, including the eastern cougar and the Mississippi sandhill crane, were listed on June 1 of this year.

I ask unanimous consent to have printed in the Record at this point, a list of the endangered species so specified by the Secretary of the Interior prior to June 1 and a second list of the additional species listed on June 1 of this year.

There being no objection, the lists were ordered to be printed in the Record, as follows:

ENDANGERED SPECIES

MAMMALS

Hawaiian hoary bat, *Lasiurus cinereus semotus.*
Indiana bat, *Myotis sodalis.*
Delmarva Peninsula fox squirrel, *Sciurus niger cinereus.*
Morro Bay kangaroo rat, *Dipolomys heermanni morroensis.*
Salt marsh harvest mouse, *Reithrodontomys raviventris.*
Eastern timber wolf, *Canis lupus lycaon.*
Red wolf, *Canis rufus.*
San Joaquin kit fox, *Vulpes macrotis mutica.*
Black-footed ferret, *Mustela nigripes.*
Florida panther, *Felis concolor coryi.*
Florida manatee (sea cow), *Trichechus manatus latirostris.*
Key deer, *Odocoileus virginianus clavium.*
Columbian white-tailed deer, *Odocoileus virginianus leucurus.*
Sonoran pronghorn, *Antilocapra americana sonoriensis.*

BIRDS

Hawaiian dark-rumped petrel, *Pterodroma phaeopygia sandwichensis.*
California least tern, *Sterna albifrons browni.*
Hawaiian goose (nene), *Branta sandvicensis.*
Aleutian Canada goose, *Branta canadensis leucopareia.*
Laysan duck, *Anas laysanensis.*
Hawaiian duck (koloa), *Anas wyvilliana.*
Mexican duck, *Anas diazi.*
Brown pelican, *Pelecanus occidentalis.*
California condor, *Gymnogyps californianus.*
Florida everglade kite (snail kite), *Rostrhamus sociabilis plumbeus.*
Hawaiian hawk (io), *Buteo solitarius.*
Southern bald eagle, *Haliaeetus leucocephalus leucocephalus.*
American peregrine falcon, *Falco peregrinus anatum.*
Arctic peregrine falcon, *Falco peregrinus tundrius.*
Attwater's greater prairie chicken, *Tympanuchus cupido attwateri.*
Masked bobwhite, *Colinus virginianus ridgwayi.*
Whooping crane, *Grus americana.*
Yuma clapper rail, *Rallus longirostris yumanensis.*
California clapper rail, *Rallus longirostris obsoletus.*
Light-footed clapper rail, *Rallus longirostris levipes.*
Hawaiian gallinule, *Gallinula chloropus sandvicensis.*
Hawaiian coot, *Fulica americana alai.*
Eskimo curlew, *Numenius borealis.*
Hawaiian stilt, *Himantopus himantopus knudseni.*

Puerto Rican plain pigeon, *Columbia inornata wetmorei.*
Puerto Rican parrot, *Amazona vittata.*
Ivory-billed woodpecker, *Campephilus principalis.*
Red-cockaded woodpecker, *Dendrocopus borealis.*
Hawaiian crow (alala), *Corvus tropicus.*
Small Kauai thrust (puaiohi), *Phaeornis palmeri.*
Large Kauai thrush, *Phaeornis obscurus myadestina.*
Molokai thrush (Olomau), *Phaeornis obscurus rutha.*
Nilhoa millerbird, *Acrocephalus kingi.*
Kauai oo (oo-aa), *Moho braccatus.*
Crested honeycreeper (akohekohe), *Palmeria dolei.*
Hawaii akepa (akepa), *Loxops coccinea coccinea.*
Maui akepa (akepuie), *Loxops coccinea ochraceu.*
Oahu creeper (alauwahio), *Loxops maculata maculata.*
Molokai creeper (kakawahie), *Loxops maculata flammea.*
Akiapolaau *Hemignathus wilsoni.*
Kauai akialoa, *Hemignathus procerus.*
Kaua and Maui nukupuus, *Hemignathus lucidus.*
Laysan and Nihoa finches, *Psittirostra cantans.*
Ou, *Psittirostra psittacea.*
Palila, *Psittirostra bailleui.*
Maui parrotbill, *Pseudonestor xanthorphrys.*
Bachman's warbler, *Vermivora bachmanii.*
Kirtland's warbler, *Dendroica kirtlandii.*
Dusky seaside sparrow,*Ammospiza nigrescens.*
Cape Sable sparrow, *Ammospiza mirabilis.*

REPTILES AND AMPHIBIANS

American alligator, *Alligator mississippiensis.*
Blunt-nosed leopard lizard, *Crotaphytus silus.*
San Francisco garter snake, *Thamnophis sirtalis tetrataenia.*
Puerto Rican boa, *Epicrates inornatus.*
Santa Cruz long-toed salamander, *Ambystoma macrodactylum croceum.*
Texas blind salamander, *Typhlomolge rathbuni.*
Houston toad, *Bufo houstonensis.*

FISHES

Shortnose sturgeon, *Acipenser brevirostrum.*
Longjaw cisco, *Coregonus alpenae.*
Lahontan cutthroat trout, *Salmo clarki henshawi.*
Piute cutthroat trout, *Salmo clarki seleniris.*
Greenback cutthroat trout, *Salmo clarki stomias.*
Gila trout, *Salmo gilae.*
Arizona (Apache) trout, *Salmo sp.*
Humpback chub, *Gila cypha.*
Mohave chub, *Siphatles mohavensis.*
Pahranagat bonytail, *Gila robusta jordani.*
Moapi dace, *Moapa coriacea.*
Woundfin, *Plagopterus argentissimus.*
Colorado River squawfish, *Ptychocheilus lucius.*
Kendall Warm Springs, dace, *Rhinichthys osculus thermalis.*
Cui-ui, *Chasmistes cujus.*
Devil's Hole pupfish, *Cyprinodon diabolis.*
Comanche Springs pupfish, *Cyrinodon elegans.*
Tecopa pupfish, *Cyprinodon nevadensis calidae.*
Warm Springs pupfish, *Cyprinodon nevadensis pectoralis.*
Owens River pupfish, *Cyprinodon radiosus.*
Pahrump killfish, *Empetrichythys latos.*
Bib Bend gambusia, *Gambusia gaigei.*
Clear Creek gambusia, *Gambusia heterochir.*
Pecos gambusia, *Gambusia nobolis.*
Unarmored threespine stickleback, *Gasterosterus aculeatus williamsoni.*
Gila topminnow, *Poeciliopsis occidentalis.*
Fountain darter, *Etheostoma fonticola.*

Watercress darter, *Etheostoma nuchale.*
Maryland darter, *Etheostoma sellare.*
Blue pike, *Stizostedion vitreum glaucum.*

Created in 1849, the Department of the Interior is concerned with the management, conservation, and development of the Nation's water, fish, wildlife, mineral, forest, and park and recreational resources. It also has major responsibilities for Indian and Territorial affairs.

As the Nation's principal conservation agency, the Department works to assure that nonrenewable resources are developed and used wisely, that park recreational resources are conserved for the future, and that renewable resources make their full contribution to the progress, prosperity, and security of the United States—now and in the future.

ADDITIONAL SPACE LISTED JUNE 1, 1973

1. Utah prairie dog.
2. Northern Rocky Mountain wolf.
3. Eastern cougar.
4. Mississippi sandhill crane.
5. Puerto Rican whip-poor-will.
6. Santa Barbara song sparrow.
7. Desert slender salamander.
8. Okaloosa darter—a tiny minnow found only in Okaloosa County, Florida.

Mr. STEVENS. Some question has arisen with respect to the status of dall sheep and brown bear, two species found in Alaska. Neither of these species is on the Department of the Interior's list of endangered native fish and wildlife. Nor are there plans to add them at this time. I ask unanimous consent to have printed in the Record a letter from the Associate Director of the Bureau of Sport Fisheries and Wildlife to this effect.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Washington, D.C., June 7, 1973.

Hon. TED STEVENS,
U.S. Senate, Washington, D.C.

DEAR SENATOR STEVENS: This responds to your letter on behalf of Mr. John W. Hendrickson, Esq., regarding dall sheep and brown bear.

Please assure Mr. Hendrickson that neither of these animals are on the Department's List of Endangered Native Fish and Wildlife and there are no plans to add them to this time.

We hope this information will clarify the matter. If we can assist you further, please call on us.

Sincerely yours,

——— ———,
Associate Director.

Mr. STEVENS. Mr. President, I would like to inquire of the Senator from California if he is prepared at this time to take up an amendment I have concerning undue economic hardship.

Mr. TUNNEY. Mr. President, the Senator from New Jersey has a few comments that he wants to make in debate, if that is agreeable with the Senator from Alaska.

Mr. STEVENS. Mr. President, that is perfectly agreeable with me.

Mr. WILLIAMS. Mr. President, first I want to extend my sincere thanks and appreciation to the Senator from Washington (Mr. Magnuson) and to other members of the Senate Commerce Committee for their hard and alert work on this bill and for their dedication to the protection of endangered wildlife.

Mr. President, this is important legislation. It is remarkable when one considers the time in which the committee has been able to deal with this bill after its introduction on the floor, the hearings, and then bringing it to the Senate for consideration by the full Senate.

It was only June 12 of this year that I introduced this bill. It followed the introduction of another bill by the Senator from Washington (Mr. Magnuson) in April. The bill that I had introduced had a broader sweep of protection than the Magnuson bill. In my judgment, the best of both bills has been combined in S. 1983, the bill before us today, and I am more than grateful to the committee for their expeditious consideration of this measure.

Mr. President, one of our most precious natural resources is our wildlife. It is difficult to imagine a world without the many and varied creatures which inhabit our forests, rivers, and oceans.

And yet, if our wildlife continues to decline at the alarming rate we have witnessed during the past 100 years or so, it is indeed possible that the time will come when it will be necessary to visit a zoo or wildlife preserve in order to observe what was once an integral part of our everyday environment.

Many species of fish, birds and mammals have disappeared through the evolution process. Many of them were never abundant to begin with and were therefore particularly vulnerable to the encroachment of civilization. However, many species would still be abundant today were it not for overexploitation by man.

It was once necessary for man to hunt wild animals in order to obtain food and clothing. However, in today's industrial society, where there is a synthetic substitute for almost anything nature can provide, we are no longer dependent upon animals, as we once were.

Most animals are worth very little in terms of dollars and cents. However, their esthetic value is great indeed. The pleasure of simply observing them, as demonstrated by the hundreds of thousands of people who visit zoos and wildlife preserves each year, is unmeasurable. Furthermore, the integral part they play in preserving the delicate balance of nature cannot be ignored.

In the United States alone, over the past 100 years, 47 species of native fish and wildlife have become extinct. We have hunted them and destroyed their habitat. We have been indifferent to their fate and ignored the fact that once an animal has vanished from the Earth, it can never be replaced. Today, we can only hope to prevent more wildlife from becoming extinct.

For quite some time, it has been evident that present laws are inadequate for protecting endangered wildlife.

Neither the Endangered Species Protection Act of 1966, nor the Endangered Species Conservation Act of 1969, prohibits the taking or possession of native, endangered fish and wildlife.

Migratory birds are protected under the Migratory Bird Treaty Act; eagles are protected under the Bald Eagle Act; and marine mammals under the Marine Mammal Protection Act. The Lacey Act provides for Federal involvement if an animal is taken contrary to State law and transported across State lines. And the importation of foreign endangered wildlife is prohibited under the Endangered Species Conservation Act of 1969.

The present endangered species law requires the Secretary of the Interior to maintain two lists of endangered wildlife. One list is composed of the names of native—or domestic—endangered wildlife and the other list is made up of the names of foreign endangered wildlife. This law further requires that a species of wildlife be threatened with extinction before it may be placed on the endangered list. An animal's continued existence must actually be in peril before it may be considered endangered.

It is absolutely essential that a species of wildlife be afforded protection before it reaches the endangered list and thereby the brink of extinction. In addition, a Federal prohibition against the taking, import, export and interstate transportation of any species listed as endangered is mandatory if endangered wildlife is to be saved.

The continued survival of many species now listed as endangered is questionable. Various factors, including small population levels, restricted breeding areas, continued destruction of habitat and inadequate prohibitions against taking are responsible for their precarious existence.

The bill before us today, S. 1983, which I introduced, is designed to provide the protection needed to save species of wildlife threatened with extinction, as well as those species which are likely to become threatened with extinction if protective measures are not taken.

I would like to take a few moments to briefly review the provisions of this legislation.

S. 1983 requires that the Secretary maintain two lists. One list shall contain the names of "endangered" native and foreign wildlife and the other shall contain the names of "threatened" native and foreign wildlife. The endangered list will be composed of those species which are in danger of extinction. The theatened list will be composed of those species which are not presently in danger of extinction, but which are likely to become endangered if protective measures are not taken. The bill sets up requirements for determining and listing species of fish and wildlife which are endangered or threatened. Further, whenever the Secretary lists a species as threatened, he is required to issue regulations to protect such species.

S. 1983 would prohibit the taking, import, export, and interstate transportation, of any species of wildlife or part thereof which is listed as endangered or threatened. In addition, the Secretary is authorized to extend the protection of the act to any species which so closely resembles in appearance one which has been listed as endangered or threatened that enforcement personnel have difficulty in distinguishing between the listed and nonlisted species.

Jurisdiction over endangered and threatened species of wildlife is divided between the Secretaries of the Department of the Interior and the Department of Commerce.

Most States are intimately involved with endangered wildlife because of the habitat they control, the legal responsibilities they have for resident wildlife, and the skilled professional personnel which they employ. Many States are already conducting programs to identify and collect information about threatened resident wildlife and to design programs for their protection.

In recognition of the fact that the protection and conservation of endangered wildlife requires close cooperation between the Federal and State Governments, S. 1983 establishes mechanisms through which they can work together to protect endangered and threatened wildlife.

S. 1983 directs the Secretary to cooperate to the maximum extent practicable with the States. Financial aid grants to the States are authorized for the purpose of carrying out programs for the protection and management of endangered and threatened species. In order to qualify for this financial assistance, a State program must meet the strict criteria which is set forth in the bill. The Federal share of such a program may not exceed 50 percent of the total estimated costs for a single State.

The act in no way limits the power of any State to enact legislation or regulations more restrictive than the provisions of the act.

Under the provisions of S. 1983, the Secretary may delegate to a State the authority to manage resident endangered and threatened wildlife, if such State submits an acceptable plan for this purpose. Such plan must be submitted to the Secretary within 1 year from the date of enactment and must meet or exceed the requirements set forth in the act for obtaining financial assistance. If the plan is not disapproved by the Secretary, it shall go into effect within the State.

The prohibitions against the taking of endangered and threatened wildlife contained in S. 1983 will not apply within the 15-month period following the date of enactment, except in those States which have not established an acceptable plan and those which do not prohibit the taking of endangered and threatened wildlife.

Resident endangered and threatened wildlife will be subject to the provisions of S. 1983 in their entirety upon the date of enactment in any State which has not established an acceptable plan.

One of the major causes of the decline in wildlife populations is the destruction of their habitat. The future of many species, including some already listed as endangered, is in jeopardy because of continued threats to their environment.

It is therefore essential that the habitat of endangered or threatened wildlife be protected from further encroachment. S. 1983 gives the Secretary authority to acquire any real property which he determines to be necessary in order to protect and restore an endangered or threatened species. He is authorized to use the land acquisition authorities of the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act. He is further authorized to use funds authorized and appropriated under the Land and Water Conservation Fund Act, in addition to direct appropriations under S. 1983, for the purpose of acquiring such lands.

In order to facilitate international cooperation in the protection of endangered and threatened wildlife, foreign currencies accruing to the United States in other nations under the Agricultural Trade Development and Assistance Act or any other law, may be used to provide assistance to any foreign country in the development and management of programs which are necessary or useful in the conservation and protection of endangered or threatened wildlife. Further, the Secretary, in cooperation with the Secretary of State, is authorized to encourage foreign countries to establish protective programs and to enter into bilateral or multilateral agreements for the protection of endangered or threatened species, and to encourage citizens of such countries to practice conservation in taking fish or wildlife for importation into the United States.

In February of this year, the United States convened a plenipotentiary conference to bring international protection to wild fauna and flora in danger of extinction due to commerce. Representatives from 80 countries attended this conference. The result was the Convention on International Trade in Endangered Species of Wild Flora and Fauna, which provides for a system of regulation for the purpose of preventing the commercial overexploitation of any species of flora or fauna judged to be endangered or threatened by trade. S. 1983 provides the means with which to carry out the provisions of the convention.

Permits may be issued for the taking of a threatened or endangered species for scientific purposes or the propagation of such species in captivity or in a controlled habitat. But only if such taking will not adversely affect the survival of the wild population.

The provisions of the act do not apply to Alaska natives, who take endangered or threatened species for the purposes of consumption or use in a native community or for the purpose of creating authentic native articles of handicrafts and clothing, provided the taking is not done in a wasteful manner.

In addition, a limited hardship exemption is authorized for persons who have entered into contracts prior to the date a species is listed or proposed to be listed as an endangered or threatened species.

A civil penalty of up to $10,000 and a criminal penalty of up to $20.000 and up to 1 year in prison, is provided for under the act.

The act also authorizes the Secretary to pay a reward of up to $2,500 to persons who furnish information leading to a civil penalty or criminal conviction.

Importers of fish and wildlife will be required to register with the Secretary of the Treasury, to keep records and to provide the Secretary or his representative with access to these records and to their place of business.

Citizen suits are also permitted, subject to certain conditions.

Furthermore, the Secretary of the Smithsonian Institution is directed to review species of plants which are endangered or threatened and methods of providing adequate protection, including legislation. He is directed to report his findings to Congress within 1 year from the date of enactment.

Mr. President, I believe that in S. 1983, we have before us the necessary tools with which to restore our endangered and threatened wildlife. I sincerely hope that my colleagues in the Senate share this view, and that S. 1983 will be approved without delay.

I appreciate the full and comprehensive explanation and review of the provisions of this bill that has been made earlier by the knowledgeable Senator from California (Mr. Tunney) and the comanager of the bill, the Senator from Alaska (Mr. Stevens).

Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. Stevens. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Acting President pro tempore. Without objection it is so ordered. The amendment will be printed in the Record.

Mr. Stevens' amendment is as follows:

On page 53, line 13, through page 54, line 11, strike sub-section 11(b) and insert:

"(b)(1) Hardship.—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception will cause undue economic hardship: *Provided*, That such exception shall be granted any non-Native resident of an Alaska Native village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles or handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified by the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of Section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used for primarily commercial purposes.

"(2) As used in this subsection, the term 'undue economic hardship' shall include, but not be limited to:

"(A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of a proposed listing of such species as an endangered or threatened species.

"(B) Substantial economic loss to persons who, for the year prior to the listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or

"(C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence: and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

"(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability."

Mr. Stevens. Mr. President, this is really a noncontroversial amendment, and I am pleased to note that I understand the distinguished Senator from California, the manager of the bill (Mr. Tunney) has indicated that he would accept the amendment.

It makes certain changes in the section granting exceptions for undue economic hardship. Because it makes a series of changes throughout that section, I have set forth the entire section as amended in my proposed amendment.

My amendment would require that an exception for undue economic hardship must be granted to all non-Native residents of Alaskan Native villages unless such residents are found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles of handicrafts. In other words, the presumption is that such persons are to be entitled to such an exception. This exception will apply probably to no more than a dozen Alaskans. These are persons who are not one quarter or more Native by blood but are integral members of the Native communities that take endangered species. Presently the only such species of which I am aware is the bowhead whale. This is taken in approximately seven villages along the northwest coast of Alaska. Thus, very few people will be covered. However, to be fair, I believe that all such persons, because they really are part of the Native communities, must be excepted to the same extent as Alaskan Natives in the same communities. Such non-Natives who depend primarily upon the taking of fish and wildlife for subsistence need not apply in writing for the exception. Others must.

This amendment defines the term "undue economic hardship" to also include three groups of persons.

The first group is those persons who incur substantial economic loss resulting from the inability caused by this act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a proposed listing of a species.

The second is those who, for the year prior to the listing of a species, have derived a substantial portion of their income from the lawful taking of any listed species and will incur substantial economic loss as the result of such listing.

The third is those who must take endangered species for subsistence and who first, are not reasonably able to secure other sources of subsistence, and second, depend to a substantial extent upon hunting and fishing for subsistence, and third, must engage in such curtailed taking for subsistence purposes.

The Secretary is also, under my amendment, given additional discretion to grant exceptions under such limits as he may determine necessary, if he does not believe blanket exceptions are warranted. Such limits may be as to time, area, or any other factor of applicability.

I ask unanimous consent to have printed in the Record a telegram I received from the Alaska Legal Services Attorney for Nome.

There being no objection, the telegram was ordered to be printed in the Record, as follows:

NOME, ALASKA, *July 19, 1973.*

Senator TED STEVENS,
Washington, D.C.

This is to convey my strong support for your amendments to the endangered species legislation currently before the commerce committee. As an Alaska legal services attorney assigned to the Nome office I travel quite extensively through the villages in northwest Alaska. The impact on the residents of these villages of prohibiting the taking of animals supplying traditional foods would be disastrous. As for nonnatives, I would estimate there are not more than 10 persons who rely on the taking of animals used in traditional Eskimo food for subsistence. They are hardly a danger to any species.

ROBERT BUNDY,
Attorney at Law.

Mr. STEVENS. Mr. President, this amendment and the other amendments dealing with Alaska Natives were worked out by my staff and the staff of the Senate Commerce Committee's Environmental Subcommittee in coordination with Alaska Legal Services.

I am most pleased to express my appreciation to the staff of the Commerce Committee's Environmental Subcommittee and to the Alaska legal services in regard to this amendment. I believe that it does protect fully the rights of those residents of Alaska Native villages. That is the intent of the amendment, to clarify the congressional intent with regard to that protection.

I am hopeful that the Senator from California may be able to accept the amendment.

Mr. TUNNEY. Mr. President, I understand that this amendment is not intended to create a loophole for those who would exploit their Native village resident status in order to increase their taking of the endangered species or to increase commerce in such endangered species but only in order to meet the bona fide community needs; is that not correct?

Mr. STEVENS. The Senator from California is absolutely correct. They are bona fide residents of Native villages who may not be considered to be Natives, who may be married, for instance, to Native people and who are part of the subsistence economy. This amendment is not intended to give anyone the opportunity to start taking endangered species or any other kind of species by virtue of merely establishing residence in a Native village.

Mr. TUNNEY. We have seen examples of thoughtless commercial taking of endangered species, which only helps to drive endangered species nearer and nearer to extinction. I would expect that no permit would be granted under the provisions of this amendment to further that kind of process. I am sure that the Senator from Alaska would agree that no area of the drafting of this amendment would be utilized in order to permit unwarranted exploitation of endangered species.

Mr. STEVENS. I absolutely concur. The Endangered Species Act of the State of Alaska is specific in that regard already. I am trying to make certain that the Federal law is as specific. We are not trying to open the door to commercial exploitation. We are trying, however, to protect those people who live in a subsistence economy and depend on the animals for food and for their livelihood. It is not intended in any way to encourage or to authorize commercial exploitation by those not so dependent.

Mr. TUNNEY. The Senator from California is aware that certain non-Native Alaska village residents are dependent upon the taking of endangered species. Some of these people have entered into contracts which may have to be broken due to this act. They would suffer unwarranted economic hardship. As I understand the amendment, its purpose is to provide individuals, particularly those who depend on such taking for subsistence purposes, and may be unaware of the application requirements of the act, with a 1-year period to find other means of support. Is that correct?

Mr. STEVENS. That is correct.

Mr. TUNNEY. With that understanding, I think that the Senator from Alaska has offered an amendment which will strengthen the legislation and will protect certain constituents of the Senator in Alaska, and the committee will accept the amendment.

The PRESIDING OFFICER (Mr. Chiles). Is all time yielded back on the amendment?

Mr. Stevens. I yield back the remainder of my time.

Mr. Tunney. I yield back the remainder of my time.

The Presiding Officer. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Alaska (Mr. Stevens).

The amendment was agreed to.

Mr. Stevens. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. Tunney. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Tunney. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. Stevens. I call up another amendment.

The Presiding Officer. The clerk will report the amendment.

The second assistant legislative clerk read as follows:

> On page 71, lines 20 through 24, strike the proviso and substitute:
>
> "*Provided*, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a state which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may be regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State."

Mr. Stevens. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. Robert C. Byrd. Mr. President, I ask unanimous consent that the vote on the pending amendment occur today at the hour of 2 p.m.

The Presiding Officer. Without objection, it is so ordered.

Mr. Eastland. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The Presiding Officer. The Senator would have to ask unanimous consent for that because there is an amendment already pending.

Mr. Eastland. Mr. President, I ask unanimous consent that I may send an amendment to the desk for immediate consideration. The manager of the bill has agreed to accept it.

The Presiding Officer. Without objection, it is so ordered, and the clerk will state the amendment.

The second assistant legislative clerk read as follows:

> On page 29, line 15, before the period, insert a comma and the following: "other than a species of the order insectica determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man."

The Presiding Officer. Who yields time?

Mr. Eastland. Mr. President, I yield myself such time as I may desire.

Mr. President, this amendment would except insect pests which the Secretary found presented an overwhelming risk to man from the protection provided by the bill. The Senate recently passed S. 1888 to provide for a program to eradicate the boll weevil and other insect pests of cotton. Millions of dollars are spent every year in trying to protect man from such pests. If these eradication programs should approach success, the bill as reported would require their cessation until the insect had been given an opportunity to regenerate.

Another example is the gypsy moth, which was brought into this country by an individual for scientific purposes and has multiplied and spread across the Northeast and is expanding its range State by State defoliating our forests. I do not believe that it makes any sense to attempt to eradicate and preserve these pests at the same time; and I hope that the committee will see fit to agree to this amendment as a technical correction to the bill.

Mr. TUNNEY. Mr. President, I accept the amendment offered by the Senator from Mississippi, which would permit the Secretary to not list species of the order of insecta determined by the Secretary to constitute a pest whose protection under provisions of this act would present an overwhelming and overriding risk to man.

It is my understanding that this amendment would permit the Secretary to not list an insect upon a finding that the insect presented such an overwhelming risk to man that there was no possible justification for providing protection, but that it would not be used to promote the elimination of species which in only a few numbers might be of value to society. The term "overriding" threat implies an extreme danger which only total destruction would prevent.

Even if the risk is overwhelming, that, in and of itself, would not keep the species off the list. The Secretary must also find that the avoidance of that overwhelming risk overrides the need to protect the species. In other words, he has discretion as to whether he chooses to protect the species or humans in the case of an overwhelming risk to man. Without the Eastland amendment, he would not have that discretion and would have to protect the species whenever it became endangered regardless of the very worst consequences for man's health or well-being.

I think that the Senator from Mississippi has a similar understanding of the amendment.

Mr. EASTLAND. That is correct.

Mr. TUNNEY. I am prepared to accept the amendment and yield back the remainder of my time.

Mr. EASTLAND. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Mississippi (Mr. Eastland).

[The amendment was agreed to.]

Mr. STEVENS. Mr. President, the pending amendment is my amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. Mr. President, it is my understanding that the Senator from Utah has an amendment and if it is one that is to be accepted by the manager of the bill, I would have no objection to taking it up at this time.

I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged against my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

[The second assistant legislative clerk proceeded to call the roll.]

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, the amendment I have at the desk is to section 16(d). The present proviso states that the prohibitions against taking under S. 1983 automatically apply in any State which does not prevent the taking of any species listed by the Secretary as an endangered species. These prohibitions against taking apply to all species which have been listed by the Secretaries. The present proviso gives the Secretaries no discretion in the matter. The prohibitions automatically apply.

This amendment, as submitted by me and the Senators from Montana (Mr. Mansfield and Mr. Metcalf) and the Senator from Georgia (Mr. Talmadge), would give the Secretary the discretion he needs to act in this area. This amendment also preserves traditional areas of State sovereignty over resident species.

The amendment provides that if the Secretary with authority over the particular species finds that a particular State does not prevent the taking of a species listed by him as endangered and also does not provide adequate protection for that species, he may in his discretion by regulation implement the provisions of subsection 10(a), the prohibitions against taking.

Certain species, like the American alligator, are listed as endangered presently by the Federal Government. However, they are not endangered in certain States like Louisiana. As a matter of fact, there are enough American alligators in Louisiana to permit the export of a number of animals to other States, for zoos and other purposes.

Certain States do not "prevent the taking" of particular species, but have enacted other measures to protect them. These include habitat acquisition to protect the areas in which these animals live and forage. Such programs are not taken into account under the present language of this section. Land acquisition and other similar conservation measures actually will do more to protect many species of endangered animals than preventing their taking.

Third, certain States, like Illinois, lists the species protected under their State statutes. The Secretary may, by regulation, list or delist additional species and it will take some time to amend the State law to take care of those circumstances.

If each State law which so lists the species covered does not exactly conform to the Secretary's lists, present prohibitions of the bill, under section 10(a), will automatically become effective.

Unfortunately, in none of these cases is the Secretary given any discretion. He must prohibit the taking of all species covered under the act merely because some of the species are not protected by State statute, although there is every reason to believe that the State would act to protect those species that are found to endangered. They have in the past, and I feel certain they will in the future.

This amendment will give the Secretary the discretion he needs to act in such situations.

I want to emphasize the necessity of keeping the States interested in endangered species. They have almost 6,000 officers who are capable of protecting these species. The Federal Government has only some 200 in the whole United States, and to shift this burden from the States to the Federal Government without giving the Secretary discretion to recognize those States which are in fact taking action to protect endangered species would be unfortunate.

I am pleased that Senators Mansfield, Metcalf, and Talmadge have seen fit to join as cosponsors of the amendment.

I hope Senators will read the letter we have placed on their desks before voting on this amendment, because the amendment, I think, is very important to preserve the role of the State fish and game departments who have done an admirable job so far in trying to protect endangered species.

Mr. President, I reserve the remainder of my time.

Mr. TUNNEY. Mr. President, as floor manager for the Endangered Species Protection Act, I am not able to accept the amendment offered by the Senator from Alaska. I recognize full well that the purposes of the Senator are well intended. However, I feel it goes too far.

The Committee on Commerce, which has carefully studied Federal-State relationships in the endangered species protection area, has designed in S. 1983, a legislative scheme which is sufficiently sophisticated, first, to permit the continued management of endangered species by those States with well-developed programs; second, to provide Federal protection to States which do not yet offer such protection; and third, to encourage the development of programs in those States which do not now actively protect endangered species in a manner that will eventually permit a much reduced Federal commitment to endangered species conservation and management.

If the bill is reported, Federal prohibitions against the taking of endangered species apply upon the date of enactment of this act only in those States which have not adopted similar protective measures. During the 15 months subsequent to the passage of the act any State would otherwise be able to exercise its full powers to manage, protect, conserve, restore, or propagate endangered and threatened species. These powers would include the power to permit the taking of threatened species. Furthermore, during this 15-month period any State might apply to the Secretary for approval of its State's endangered species management plan. Any State whose plan was not disapproved by the Secretary within 3 months of submission to the Secretary would have full power to regulate both endangered and threatened species, including the power to regulate the taking of endangered species otherwise regulated under this Act. At the end of the 15 months following passage of the act, all of the provisions of this act regarding the management and taking of endangered and threatened species would go into effect in any State which had not applied to the Secretary or whose plan had been disapproved by the Secretary.

Thus, the bill as reported, takes care of all the options: First, it provides immediate protection against the taking of endangered species in any State which has not provided for such protection at this time. Second, it allows any State to secure full management powers over endangered species by submitting an adequate management plan to the Secretary for approval. Third, 15 months after the passage of the act, Federal law would go into effect to carry out the purposes of this act in any State that should not have an approved management program.

Not only does the bill, as reported, permit any State which adequately protects endangered species to continue such a protection program; it provides funds to assist the State in its management and conservation activities. Ten million dollars is provided to fund this effort for the first 2 years the act is in effect.

The Senator from Alaska argues that the issue is whether or not we are going to preempt the State judicial power to manage present fish and wildlife. This, however, is not the issue. The issue is whether we are going to provide full protection to those species of fish and wildlife which are imminently in danger of extinction in those States which have not yet deemed fit, on the 200 years of our Nation's existence, to provide full protection to these species.

Presently, 35 States provide protection for endangered species. In most of these States, their laws are as strong as or stronger than the provisions of this bill. In the others there are strong management programs. Only 15 States do not now provide some protection for endangered species.

Under this bill there would be absolutely no Federal intervention in those States which provided full protection for presently endangered species. Those States which do not provide absolute prohibitions against taking endangered species but do provide strong programs approved by the Secretary would be totally free to manage a residential species within 3 months of this act. The rationale behind the proposed amendment is that in an emergency the Secretary can rush in and take care of any endangered species. This bill as reported in predicated on the evidence provided in hearings before the Committee on Commerce in the last 2 years that an emergency already exists. This bill only prevents the capacity of those who would exploit endangered species in those States which have not yet had the time to prepare adequate endangered species programs.

This is a bill to protect endangered species, to provide for their conservation, restoration, and propagation. Some argue that the States should have their chance. I argue that the States have had their chance. Nothing in this bill prevents them from continuing to do the excellent work that most of the States have done in the past.

Some States, such as Alaska, have done an excellent job. I think California has done a good job. But there are States which have not done a good job, and it seems to me we ought to have the ability, immediately upon passage of this bill, to protect endangered species inasmuch as those States themselves have not seen fit to do as good a job as the authors of the bill envision as being necessary to protect endangered species.

Mr. STEVENS. Mr. President, I think the Senator from California states his case very well, but, unfortunately, the bill is drawn on the basis of making the Federal law preemptive. In the event there is a species that is not totally protected, then the Federal law applies to all species.

The effect of the amendment I have offered is that if the Secretary finds within this 15-month period that a State does not prevent the taking of a species listed by him as endangered, does not provide adequate protection for that species, he may by regulation implement subsection 10(a) with respect to the taking of that species. In other words, my amendment is directed to a particular situation.

The present language of section 16(d) makes the provisions of the bill effective on the date of enactment of the bill. It does not prevent the taking of any species listed by the Secretary as an endangered species. I think it is most important to keep in mind again what we are doing. We are saying, in effect, that if Louisiana has a management program which has in fact produced a situation in which alligators can be harvested for cultural, scientific, or other purposes without harming the species in that area, even though the alligator may be listed as an endangered species by the Secretary of the Interior, since they do not prevent the taking of alligators, and in fact are taking them under a very scientific and wise management program, that all of the Louisiana laws would be suspended with regard to any species listed among the 109 in the Federal endangered species list. That to me is foolhardy, to suspend the activities of a very viable and good management program, and one that is farsighted.

All that my amendment would do would be to give the Secretary discretion over that on the basis of the individual species, and not make the law effective on the date of the act as to all species if there is any species that is not protected and on the list of the Secretaries on the date of enactment of the bill.

I think that it would be important to list some of the types of species we are talking about. There has been prepared a list of some 14 particular species.

I ask unanimous consent to have this material printed in the Record at this point if the Senator from California does not object.

Mr. TUNNEY. Mr. President, I do not object.

There being no objection, the material was ordered to be printed in the Record, as follows:

1. Longjaw cisco—distribution of this species is throughout Lakes Michigan and Huron, and a very small population in the small deep hole in Lake Erie that was present as late as 1948. The decline of this species is attributed to sea lamprey predation and intensive commercial fisheries for large ciscos and increased competition from the small bloater and alewife in Lakes Michigan and Huron. The low number in Lake Erie is due to a very limited favorable environment which has become increasingly unfavorable in recent years.

2. Lahontan cutthroat trout—this species is found primarily in California, but there are a few in Nevada. California provides complete protection but Nevada does not. The decline of the species is attributed to damage to spawning beds resulting from forest removal, fires, and overgrazing. Also, dams which block spawning runs, pollution, diversion of water for irrigation, hybridization, and competition with rainbow trout and other cutthroats are considered to be other reasons for their demise. This species is found primarily on public lands and has been placed in a special protected category by the Bureau of Land Management. The Bureau of Sport Fisheres and Wildlife is constructing a fish hatchery primarily for rearing this subspecies.

3. Breenback cuttroat trout—this species is found only in Boulder and Larimer Counties, Colorado. The decline of this species was caused by deterioration of habitat due to man's activities, competition from stocked trout, and hybridization. Although my information does not show that this species is fully protected by the State of Colorado, the wildlife agency is cooperating in reclamation and restocking of certain waters in the Rocky Mountain National Park and stocking is proposed in other limited reclaimed suitable waters. Barrier dams to isolate populations and angling restrictions are also proposed for certain streams.

4. Arizona trout—the Arizona Game and Fish Department has stocked several streams in Arizona with this species. They have closed Ford Creek and the Upper East Fork of the White River to fishing. Barrier dams to protect the species were constructed on both streams in cooperation with the department, and, the White Mountain Apache tribe constructed two lakes for this trout. Plans are underway to increase hatchery production of this species and restock suitable reclaimed

waters. The Arizona Game and Fish Department has several thousand of these fish producing at one of its state hatcheries.

5. Pahranagat bonytail—this species is found only at the outflow of two springs in Lincoln County, Nevada. Its decline is attributed to irrigation development and establishment of competitive and predatory exotic species in its range. Measures have been proposed to transplant the species into other suitable habitat, if it can be found.

6. Woundfin—this species found essentially in the Virgin River below Hurricane, Utah. Its decline is attributed to modification of its habitat by man. The species is adapted to life in sandy, swift, turbid rivers. A dam is proposed above St. George, Utah, which purportedly would render this species extinct. Research has been proposed to determine its habitat requirement so as to establish a population elsewhere.

7. Colorado squawfish—this species occurs only in the middle and lower Green River, the main Colorado River above Lake Powell, and the Salt River. The reason for its decline is attributed to the modification of its habitat by man through construction of large reservoirs. The species will not reproduce in cold tailwaters below high dams nor in reservoirs behind these dams.

8. Warm spring pupfish—this species is found in School Spring and Scruggs Springs in the northern part of Ash Meadows, Nye, Nevada. Although not fully protected by state law, School Springs, which is administrated by the Bureau of Land Management, was improved and fenced in 1969. In 1970 a well was drilled to serve as an additional water supply during periods of low spring waterflow to protect the species. This pupfish, of course, is found primarily on public land.

9. American alligator—the American alligator is completely protected in all states. However, due to increased populations and impending habitat destruction, the Louisiana Wildlife and Fisheries Commission lifted the total protection last year and conducted a closely regulated harvest in one parish of the state. This species, with its tremendous reproductive potential, and with strict law enforcement given by southern state wildlife agencies, has rebounded tremendously in recent years. It is very doubtful if it will remain on the endangered species list very long.

10. Puerto Rician boa—this species, found only in Puerto Rico, is in trouble mainly from mongoose predation, according to authorities. This theory has been disputed, however, by some observers. People usually kill every one they see and automobiles kill a few every year.

11. Aleutian Canada Goose—this species does not receive total state or federal protection. It is managed by the federal government, not the state, under the Migratory Bird Treaty Act. Hunting is still permitted by the Bureau of Sport Fisheries and Wildlife.

12. Mexican duck—likewise, this species comes under the purview of the federal government. It is not totally protected, hunting is still allowed by the Bureau of Sport Fisheries and Wildlife.

13. Eastern timber wolf—this species is totally protected in every state except Minnesota. The State of Minnesota came up with a state plan to protect and manage this species last year but violent objection from the Bureau of Sport Fisheries and Wildlife resulted in the state legislature rejecting the proposal. Hopefully this program will be accepted by the next state legislature. At present nearly 2 million acres of the Superior National Forest provides complete protection for the species.

14. Red wolf—the red wolf is found in Texas and Louisiana. Texas recently passed an endangered species law which affords complete protection to the red wolf in that state. In Louisiana the red wolf is given complete protection except in cases of livestock predation which is controlled by federal agents. The livestock-killing animals are removed alive and transferred to the Wild Animal Propagation Trust of the American Association of Zoological Parks and Aquariums.

Those animals listed above are the only ones on the U.S. native endangered species list not receiving complete protection by state law, to the best of my knowledge. As you can see two of the species are under federal control, not state. Also, many of the species do receive protection in some form or another either from the state or some federal agency when they are found on public lands. Therefore, I cannot foresee where any animals on the endangered species list would suffer as a result of an interim period provided in the new endangered species act to give state agencies an opportunity to beef-up their programs in compliance with that act.

Mr. STEVENS. I am not trying to undermine the bill. My State supports the bill, and I think that we have been the leaders in this endeavor. My Governor has indicated that he thinks it is a good idea. However, we want to maintain our ability to act with regard to all species, even though it might be that one species is listed.

I hope that the Senator from California will see my point, that if one species or more is listed and is endangered in Pennsylvania, but is not endangered in Alaska, having it on that list, as the bill stands now, would not only lift it with regard to one State, but would lift it entirely.

Mr. TUNNEY. Mr. President, all that the State of Alaska would have to do would be to apply to the Secretary for approval of this plan.

Mr. STEVENS. But what that would require would be calling a special session of the State legislature. We protect them by State statute. And we must be given the time to call the legislature into session to pass a law on the subject. That is the reason for the 15 months delay.

My friend, the Senator from California, will recall that we put in the 15 months as a sort of breathing period to permit the States which do not protect the taking of any species to have time to act.

We can turn that around and say that the burden is on the Secretary, and if he finds that they are not protected, he may suspend the State law as to that species.

I think that is fair. I think the burden is where it should be. After all, we are dealing with 109 species on the list now. And a lot of people are thinking that we want to take a species that is in danger. They do not understand the fact that Louisiana can have alligators literally, as the old saying goes, coming out of the swamps, whereas they are endangered in some other States.

Mr. TUNNEY. The State of Louisiana could apply for approval of the plan. And if they had an excess number of alligators and they felt that a reasonable harvest of alligators made sense in the State of Louisiana, the Secretary of the Interior might agree.

Mr. STEVENS. In the meantime, all of the plans would be suspended. The State law would become inoperative. They are listed and, therefore, no management could be undertaken as far as the harvesting of any species during that period of time. And the State has to wait and ask the Secretary of the Interior for approval of a plan which is already effective.

Mr. TUNNEY. In the case of Louisiana, it is the understanding of the Senator from California that if the State of Louisiana made application, they would have immediate approval of the plan as it relates particularly to alligators. They would then be under State management, and there would be no problem.

What specific species in Alaska is the Senator from Alaska talking about in terms of their being affected?

Mr. STEVENS. I would inform the Senator from California that to my knowledge there is no species in Alaska that are endangered that are not already protected by the State plan.

I am not talking about Alaska. I am talking about the general proposition of protecting them where they are endangered. Again, in the Lake Superior wilderness area, we have an area which protects wolves, even though they may not be fully protected by the State law.

They are provided a habitat, which is absolute protection. It would be immaterial as to whether the State law protected them, because the only place in which they are found is in a sanctuary.

Any Secretary of the Interior under my amendment, if he lists wolves, would look to that area and say that those wolves do not have to be listed under State endangered species law, because the State already has, as a practical matter, imposed absolute protection for that species. Under present language of the bill, because they are in fact listed on the Federal endangered species list for the whole Nation, they would be taken out of State jurisdiction in this regard.

Mr. TUNNEY. Unless the State came in and asked for approval of that management plan. In the case of Alaska, the management plan would be approved immediately. It is an excellent plan. We are not talking about States such as Alaska which have excellent management plans. However, we are talking about States which do not have plans or which have inadequate management plans. We did not want to wait 15 months to have the kind of controls that were deemed necessary.

It was the view of the committee that if there is a clear and present danger to the endangered or threatened species, then we wanted to have action to protect those species as of the date of the enactment of the law.

I think it is very important that we take such action immediately. It does not make sense, at least to me, to say that we are going to wait for another period of time when we already recognize that the danger is present and with us and that some species are threatened with extinction.

Mr. STEVENS. Mr. President, I think the Senator from California states his position well. I have no great disagreement with him the way it is stated.

The only problem is that the burden is placed on the wrong foot. The burden is placed on those people who have a good program—a program that is effective—to come forward and ask the Secretary to approve their program. However, my amendment puts the burden on the Secretary to go to those who do not have an effective program and suspend their authority as to particular species.

As the Senator points out, some 30 States do already have programs.

A relatively small number of States do not have the program. However, it would be very simple for the Secretary to go to these States and say, "You are not protecting the species that are listed." They would then be suspended and they would have the burden of coming back and asking for approval.

However, under the Senator's amendment, the 30 States that do have programs are all suspended if any of them contain any species listed on the Federal endangered species list on the date of the enactment of this act.

In the outline which I had printed in the Record, one of the species, as I recall, is a small fish that is found only in Hot Springs. If that fish is not listed on the endangered species program in that State, the entire management program is suspended until the State comes in and asks for restoration.

That is wrong. If the State does not list that species, and the Secretary wants to have it listed, he can do so immediately under my amendment. There is no time frame involved. He can issue the regulations to protect them immediately.

I am sure that if my amendment is in the bill at the time the bill goes to the House and the bill is signed by the President, the Secretary will have the regulations ready to protect those species that are not protected now.

But I believe we have an honest difference of opinion. I want to be subjective, to put the burden on the Secretary to look after those States which do not have effective regulation. I believe the Senator from California is defending the committee's bill, which puts the burden on those States which do have effective regulation to come in and prove it. That to me is the wrong way to approach the bill, and I disagree very honestly and openly with the Senator from California, as I have throughout the consideration of this measure.

Therefore, I would like to change that proviso.

Mr. TUNNEY. Mr. President, I would just like to say there is no Senator who has made a greater contribution to the development of this legislation than the Senator from Alaska.

The PRESIDING OFFICER. All time of the Senator from California has expired. The Senator from Alaska has 8 minutes remaining.

Mr. STEVENS. I yield such time as the Senator from California may desire.

Mr. TUNNEY. I thank the Senator. As I say, there is no Senator who has made a greater contribution to the development of this legislation than the Senator from Alaska. So I certainly do not want my remarks to be in any way construed that I think the Senator from Alaska is trying to open up an evasive loophole in this legislation, because I do not think that is the case. His persistent interest in seeing this legislation passed shows that he is devoted to the concept of protecting endangered species. I know this full well, and I would say that he has made a tremendous contribution, not only in the committee but on the floor, in explaining what the purposes of this act are.

I must say that I do disagree on this particular point. I think that we do have a clear and present danger to endangered species now, and I think that the Federal Government ought to, at the time that this bill passes, provide protection to endangered species, and the States ought to come in and have their plans approved if they are not now providing adequate protection. In the case of Alaska, it would be approved forthwith, and with many other States the case would be the same. As things now stand, many States already provide the protection required under the act.

The Senator mentioned the State of Louisiana and the alligators, and the fact that at one point alligators were threatened in Louisiana, but through a good management program the State of Louisiana has been able to see propagation of alligators to the point that a reasonable harvest is deemed desirable.

There is nothing in the legislation as presently drafted and as reported by the committee to prevent the Secretary from granting a permit to take a reasonable number of alligators, even if the State plan for the management of endangered species in Louisiana was disapproved by the Secretary. I do not know whether the State plan would be disapproved or approved, but even if it were disapproved, and that meant that the Federal regulations would be operative, it would not prevent the Secretary from granting a specific permit to the State to allow a reasonable number of alligators to be taken.

So I recognize that there is a disagreement. I recognize that there is a difference of philosophy. I just happen to think that we have such a need for the management at the Federal level of endangered species that we ought to have the act become operative across the board at the time of passage, and if States are now handling the problem better that the Federal Government, the Federal Government would not be involved in their affairs.

Mr. STEVENS. Mr. President, I thank the Senator from California for his kind remarks. I believe we have, as I stated, an honest difference of opinion on the approach to be taken with regard to alligators. They are listed among the 109 that are already endangered species, notwithstanding the fact that, as I say, in Louisiana they have a good management program and they are not endangered there. The effect of the committee bill would be to suspend the Louisiana program until the State of Louisiana came forward and demonstrated that it was in fact a good program. The fact that there is a surplus of alligators there demonstrates that they have a good program, in my opinion.

I would say to the Senator from California that when I conducted the hearings on this matter, I asked the representatives of the National Association of State Game & Fish Commissioners, the Wilderness Society, the Friends of Earth, and the others with regard to this preemption, did they not feel that the States should have a time period to act before the Federal Government should move. My understanding of their response was that they all believed that the State should be given a reasonable time. That is the reason for the 15-month time period that is in the bill, which is reasonable as far as the committee is concerned. The Secretary should act on an emergency basis to protect individual species that are in need of protection during that period.

That is my understanding of the general tenor of the witnesses' comments, and I believe this amendment would carry out that objective, which I outlined to the witnesses as they appeared before the committee.

Mr. President, I assume that the time is expired.

The PRESIDING OFFICER (Mr. Chiles). All time on the amendment has expired. Time can be yielded on the bill itself.

Mr. TUNNEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. TUNNEY. Is there anything in the rules to prevent another amendment from being offered between now and 2 o'clock, the time that was designated for the yea-and-nay vote on the Stevens amendment?

The PRESIDING OFFICER. The time on the Stevens amendment having expired, another amendment is in order.

Mr. MOSS. Mr. President, I send to the desk a series of amendments, which I call up, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. Moss. Mr. President, since they are rather lengthy and complicated, I ask unanimous consent that further reading of the amendments be dispensed with, and I shall try to explain what the purpose of the amendments is. I have discussed them fully with the manager of the bill.

The Presiding Officer. Without objection, it is so ordered.

Mr. Moss' amendments, en bloc, are as follows:

Page 29, line 9, insert "(1) 'Conservation' and 'management' mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to, research census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation and restoration of such species, including regulation and taking necessary to these ends.

Page 30, line 16, insert "(7) 'Optimum carrying capacity' means the ability of a given habitat to support the optimum sustainable population of an endangered or threatened species in a healthy state without diminishing the ability of the habitat to continue that function."

Page 30, line 16, and immediately following (7) above, insert "(8) 'Optimum sustainable population' means, with respect to any population segment to endangered or threatened species, the number of such species which will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent part."

Pages 29, 30, 31 and 32, renumber the present paragraphs (1), (2), (3), (4) and (5) as (2), (3), (4), (5) and (6) and renumber the present paragraphs (6), (7), (8), (9), (10), (11), (12), (13) and (14) as (9), (10), (11), (12), (13), (14), (15), (16) and (17).

Page 36, lines 14 and 15, strike the words "protection, restoration or propagation" and insert the words "and management."

Page 38, lines 2 and 3, strike the words "protection, restoration, or propagation" and insert the words "and management."

Page 38, lines 11 and 12, strike the words "management, conservation, protection, and restoration" and insert the words "conservation and management."

Page 39, lines 12 and 13, strike the words "conservation, protection, restoration, and propagation" and insert the words "conservation and management."

Page 39, lines 21 and 22, strike the words "conservation, protection, restoration and propagation" and insert the words "conservation and management."

Page 40, lines 7, 8 and 9, strike the words "research, censusing, law enforcement, propagation and habitat acquisition or improvement." and insert the words "conservation and management."

Page 72, line 4, strike the words "management and taking" and insert the words "conservation and management."

Mr. Moss. Mr. President, these amendments that I have proposed are simply to establish in this bill a definition or definitions that are consistent generally with the language that was worked out in the sea mammal bill that the Senator from South Carolina (Mr. Hollings) worked on so vigorously, and that also came out of our Commerce Committee.

What we are trying to do here, and what this amendment will accomplish, is to define conservation and management in a way that is agreeable to and supported by the wildlife community. It reinforces Congress' determination, as expressed in the Marine Mammal Protection Act, that our invaluable and irreplaceable wildlife resources be handled on a professional and not simply an emotional basis.

The amendments would, first of all, insert a new paragraph 1 at page 29, line 9, to provide that conversation and management mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations in endangered and threatened species at the optimum carrying capacity of their habitat.

Such terms include the entire scope of activities that constitute a modern scientific resources program, including but not limited to research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation, and restoration of such species, including regulation and taking necessary to these ends.

The thrust of these amendments is that the States, in managing resident wildlife, are authorized to maximize the population. It is not simply to keep endangered species at a good level, but really to improve and expand the species, and that whatever scientific methods are needed in order to bring the population up to the maximum carrying capacity of the habitat shall be done, and this includes all of the specific functions. Also, in the amendments, we define "optimum carrying capacity" and "optimum sustainable population" and what those terms mean. Then, with those definitions engrafted in there, there is a renumbering of the paragraphs in order to make them fit in their regular order in there. That is what constitutes the second page of the amendment.

We consistently use the words "conservation and management" rather than repeating all the other terms, because they all refer back to the first paragraph on conservation and management.

In our consideration of the bill, we thought it would be entirely proper to write this language in a concise and logical manner, and to emphasize the fact that the purpose of this is not simply to protect the resident species which are threatened or endangered, but simply to provide that there be a maximum effort made to restore the numbers of those species to the point that they would not any longer be considered threatened or in any way endangered.

We believe that this language will accomplish that.

I have discussed this, as I say, at some length with the manager of the bill. I compliment him very highly for his dedication to the work he has done on this matter and for his great concern for the problems we face.

As our country has become more populated and metropolitan in nature, of course, we put pressure on the various species of wildlife. The time is here when we must make a determined effort to see that we do not drive to extinction any of the wildlife that can be preserved.

I think that is the objective of all of us who have been concerned with this bill.

I especially compliment the Senator from California for the valuable work he has done on this matter.

Mr. Tunney. Mr. President, I want to thank the distinguished Senator from Utah for his very kind remarks. It is clear that the language which is suggested by the Senator from Utah would strengthen the purposes of this act, which is, namely, to protect, conserve, propagate and restore endangered species. I have had the opportunity to consult with the Senator from Utah, as he has indicated, regarding the language, and I think that my understanding of it is similar to his; that is, that the amendment is designed in a more careful fashion to articulate the type of protections the committee intended when it reported the bill from the committee to the floor of the Senate.

Mr. Moss. I thank the Senator from California for his remarks. I believe that we see eye to eye on the matter. It will strengthen the bill considerably as these definition amendments are adopted.

Mr. TUNNEY. One further point. It is the understanding of the Senator from Utah, is it not, that in no way by this amendment are we going to be moving the direction of treating endangered species as game animals?

Mr. Moss. No. It does not affect that at all. It does not change the characterization of any animal into a game or a nongame kind of animal. But many of those on the endangered or the threatened species list do fall into the game classification.

Mr. TUNNEY. If they do fall into the game classification the protection afforded them under this bill, will in no way be diminished by the language which is the clarifying language suggested by the Senator from Utah?

Mr. Moss. Yes. That is true. It applies to all animals of resident species. In fact, beyond even the animal class.

Mr. TUNNEY. It would not change the protection given to endangered species.

Mr. Moss. No, it would not change that.

I want to compliment the Senator from Utah for the great interest he has shown in the bill. As a member of the committee, he has taken a very deep interest in the matter and has helped to fashion the bill which has come to the floor of the Senate today.

With the understandings that I now have, and as expressed by the Senator from Utah, I am prepared to accept the amendment and yield back the remainder of my time.

Mr. Moss. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. Haskell). All time on the amendment has now expired.

The question is on agreeing to the amendment of the Senator from Utah (Mr. Moss).

The amendment was agreed to.

Mr. Moss. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. TUNNEY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TUNNEY. Mr. President, I send to the desk a series of technical and clarifying amendments to S. 1973 and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. TUNNEY. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendments will be printed in the Record.

The text of the amendments is as follows:

On page 27, line 12, before the word "educational." insert the words "aesthetic, ecological,".

On page 28, line 8, after the word "States" insert the words "and other interested parties,".

On page 31, line 6, delete the word "terrestrial".

On page 31, line 20, after the word "harass," and before the word "pursue", insert the word "harm,".

On page 33, delete lines 17–23.

On page 33, line 34, delete the number "3" and insert the number "2".

On page 35, line 9, delete the word "Secretary" and insert the word "Secretaries".

On page 36, lines 15–16, strike the words "endangered or".

On page 38, line 12, before the word "and" insert the word "propagation".

On page 38, line 18, after the word "has", insert the words "statutory and regulatory".

On page 39, line 13, strike the words "facing extinction" and, before the word "fish" strike the words "endangered and threatened".

On page 40, strike lines 13–17 and insert, in lieu thereof, the following:

"(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

"(C) the number of endangered and threatened species within a State;

"(D) the potential for restoring endangered and threatened species within a State; and

"(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species."

On page 40, line 19, after the word "year" insert the word "shall".

On page 40, line 20, after the period insert the words "Any funds remaining unobligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section."

On page 41, line 18, after the period, insert the words "For the purposes of this section, the non-federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money."

On page 41, line 23, after the word "appropriated" insert the words "through the fiscal year ending June 30, 1977."

On page 42, line 12, strike the word "of" and insert in lieu thereof the word "regarding".

On page 49, lines 19 and 20, delete the words "subsection (a)" and insert the words "paragraph (1) of this subsection".

On page 50, lines 20–22, strike the words "specimens or products processed or manufactured in whole or in part from specimens of any such species" and insert, in lieu thereof the words "any endangered species of fish or wildlife".

On page 51, lines 12–14, after the word "consumption" strike the words, "or taken for recreational purpose in waters under United States jurisdiction or on the high seas," and insert in lieu thereof the words ", or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas".

On page 55, line 16, after the word "consumption" insert the words "within native villages or towns".

On page 59, line 14, after the word "revocation," insert the words "made pursuant to this section".

On page 68, line 11, strike the word "protection", and insert in lieu thereof the word "conservation".

On page 69, line 20, add a new subsection as follows:

"(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (P.L. 92–516) is amended by striking out the words 'by the Secretary of the Interior under Public Law 91–135' and inserting in lieu thereof the words 'or threatened by the Secretary pursuant to the Endangered Species Act of 1973' ".

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

Mr. TUNNEY. Mr. President, I have submitted these technical and clarifying amendments to the Senator from Alaska (Mr. Stevens) and he has indicated that he will support them. The amendments will help to achieve the purposes of the bill and will clarify some confusion caused by language remaining in the bill from earlier drafts or omitted from earlier drafts which went unnoticed during the final committee markup.

They are, as I indicate, technical in nature. They are important, however.

If there is a member of the minority on the floor now, I should like to move their adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TUNNEY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. TUNNEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment is as follows:

On page 53, line 8, strike the word "for.".

On page 53, line 8, before the word "scientific" insert the word "for".

On page 53, at line 11–12, strike the words "the propagation of such species in captivity or in a controlled habitat", and insert the following "(2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat.

Mr. TUNNEY. Mr. President, the purpose of the amendment I am offering is to allow the Secretary to permit the taking of an endangered species for the enhancement of the species. This is a needed management tool recommended by all wildlife biologists. It is needed, for example, where a species is destroying its habitat or where the species is diseased.

This amendment has been discussed with the Senator from Alaska, who has indicated that he approves of it.

I am prepared to yield back the remainder of my time, if the distinguished Senator from Kentucky, the designee of the minority leader, is prepared to yield back the remainder of his time.

Mr. COOK. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. TUNNEY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. TUNNEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment is as follows:

On page 52, between lines 22 and 23, insert a new subsection as follows:

"(c) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act.".

Mr. TUNNEY. Mr. President, I submit an amendment to S. 1983 to exempt from the prohibitions of this bill present owners of certain endangered species.

This amendment would exempt from Government interference endangered species now lawfully held in captivity or in a controlled environment which might come under provisions of this bill. These animals include pets, species held for obligation purposes for which permits might otherwise have to be secured under this bill, and species held in similar circumstances. The Government has made several attempts in the recent past to prosecute certain individuals attempting to enhance the condition of endangered species for seemingly technical violations of the law.

Mr. President, this amendment has been discussed with the Senator from Alaska, and he has indicated that he approves of this amendment.

I am prepared to yield back the remainder of my time, if the Senator from Kentucky is prepared to do the same.

Mr. COOK. Mr. President, we have no objection to this amendment and I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

ENDANGERED SPECIES ACT OF 1973

The Senate continued with the consideration of the bill (S. 1983) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

Mr. COOK. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

> On page 43, line 11, insert the following: strike the word "such," and insert the word "any."

Mr. COOK. Mr. President, an earlier version of this bill provided that the appropriate Secretary review other programs administered by him and utilize such programs in furtherance of the purpose of the act. The bill provided further that all other Federal departments and agencies, shall, in consultation with and with the assistance of the Secretary, utilize their authority in furtherance of the purpose of the act by carrying out programs for the protection of endangered species or subspecies of fish and wildlife by taking such action necessary to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence of endangered species.

I am in complete agreement with this provision as stated, but it did not go far enough as it did not protect the habitat of the endangered species. I therefore recommended to the committee, and I am pleased that the bill we are now considering includes a provision which would prohibit the destruction or modification of the critical habitat of such species.

Mr. President, the only purpose of my amendment to change the word "such" to "any" is to make the provision all inclusive. I think we should be concerned with the habitat of all wildlife instead of considering that of endangered species.

We have a situation in my State that falls in this category.

Mr. TUNNEY. Mr. President, I ask the Senator whether the effect of his amendment would be, first, if the Bureau of Public Roads wanted to build a highway through an area of the country, as it deemed necessary for the citizens of the Nation, if it would be prevented from doing so by changing the word "such" to "any."

Mr. COOK. Mr. President, I would be less than fair with the Senator if I would say otherwise to him. It is conceivable that this could happen. It is conceivable also that never would happen.

The only point I am making is that they would have to have consultation with the respective agency. The point I have in mind is that we have the Pioneer Weapons Hunting Area in the State of Kentucky. It is the only one of its kind in the United States. There is no other. It is a tremendous nesting area for wild turkeys.

I might suggest that the Corps of Engineers decided that it would build a road right through the middle of this area. We have tried our best to have them change the route of the road. They had alternate routes, but they decided, despite their alternative routes, that this is where they would build the road.

This language means that they have to consult with the respective agencies under this bill, and they have to consult with the respective State agencies in order to work out this problem. That is exactly what it means. And I would be less than candid if I did not explain that to the Senator.

Mr. TUNNEY. Mr. President, as I understand it, after the consultation process took place, the Bureau of Public Roads, or the Corps of Engineers, would not be prohibited from building such a road if they deemed it necessary to do so.

Mr. COOK. The point is that they would then be doing it after consultation with the respective agencies, rather than making that decision on their own.

Mr. TUNNEY. But they would have the final decision after consultation.

Mr. COOK. The Senator has put me in a rather bad light. Under the terms of this, it would have to be under an agreement worked out with the respective agencies.

Mr. TUNNEY. Mr. President, as I understand the legislation, just reading the language:

> All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation and with the assistance of the Secretary—
>
> (b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

So, as I read the language, there has to be consultation. However, the Bureau of Public Roads or any other agency would have the final decision as to whether such a road should be built. That is my interpretation of the legislation at any rate.

Mr. Cook. Mr. President, we find ourselves in a position where we are debating or really talking about endangered or threatened species, and that is where the consequence of this amendment lies.

I might suggest to the Senator from California that if the Senator feels this might be the burden of this language, I do have another amendment which would designate this area.

Mr. Tunney. Mr. President, I would prefer it if the Senator would withdraw his pending amendment. I know what the Senator's next amendment is. And I support that amendment. I recognize that the Senator has to secure unanimous consent to make the amendment germane to the bill. However, I am prepared to accept the amendment. I have looked it over.

I do not think there is any desire on the part of any Senator on the floor to object to a unanimous-consent request that the amendment be considered.

Mr. President, I am hesitant, as the floor manager of the bill, to accept the amendment. This does broaden considerably the impact of the language which requires consultations with the respective agencies and the Department and the Secretary of Interior. It moves it from endangered species to any species of animal. And with that extension of the language on the floor and without any hearings, I believe it is something that I would not be able to accept.

Mr. Cook. Mr. President, I withdraw my amendment.

The Presiding Officer. The amendment is withdrawn.

Mr. Cook. Mr. President, I send to the desk an amendment which is the same as S. 1532 which I introduced earlier this year and ask that it be immediately considered.

The Presiding Officer. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. Cook. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the bill, add the following:

That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(b), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

Sec. 2. As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture.

Sec. 3. The wilderness area designated by this Act shall be known as the Cave Run Wilderness and shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as Wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zilpo recreation site access road generally on a route extending northward from Forest Development Road Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

Mr. COOK. Mr. President, I ask unanimous consent that as to this amendment the rule of germaneness be waived.

Mr. ROBERT C. BYRD. Mr. President, the Senator does not have to ask unanimous consent as long as no Senator makes a point of order.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. COOK. Mr. President, I thank the Senator from West Virginia.

Mr. President, I thank the Senator from California, because this now gives me an opportunity to clarify the situation.

Mr. President, I believe that S. 1983 as written will contribute to the guarantee we all want that succeeding generations will enjoy some measure of nature and wildlife as we have known it. However, I would like further assurance for the people of Kentucky.

Mr. President, in my State of Kentucky, we have located at Cave Run, in Daniel Boone National Forest, a Pioneer Weapons Hunting Area. Within this area are various species of wild turkeys, white-tailed deer, red and grey foxes, ruffed grouse, dove, and quail. During the past year there have been attempts made to bisect this Pioneer Weapons Hunting Area by construction of a road through the normal nesting and grazing area of these species. To do so would most assuredly destroy or severely endanger the species. The tragedy is in the fact that a feasible alternate route is available that would generally skirt the Pioneer Weapons Hunting Area. We cannot permit such inconsiderate and ill-conceived projects to continue.

The amendment would now add a new section to the bill which would designate under section 3(b) of the Wilderness Act of the United States Code, that this area be designated as a wilderness area. Therefore, having such a designation, it is in the unique position of not being subject to this kind of tampering.

If we can get this accomplished, we will solve a problem and this has been going on for more than 2 years on my part.

We no longer have to fear that an agency can decide to arbitrarily build a major highway which bisects this area. I assure my colleagues that this would be of significance to the Pioneer Weapons Hunting Area located in the Daniel Boone National Forest in Kentucky.

Mr. TUNNEY. Mr. President, I have had an opportunity to consult with the Senator from Kentucky on his amendment. It is a good amendment. It is specific. It clearly focuses on the problem. I am prepared to accept the amendment.

I yield back the remainder of my time.

Mr. COOK. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. Haskell). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

The PRESIDING OFFICER. The hour of 2 p.m. having arrived, the Senate will now proceed to vote on the amendment of the Senator from Alaska (Mr. Stevens) to S. 1983.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Robert C. Byrd. I announce that the Senator from Nevada (Mr. Cannon), is necessarily absent.

I further announce that the Senator from South Dakota (Mr. Abourezk) is absent on official business.

I also announce that the Senator from Mississippi (Mr. Stennis) is absent because of illness.

Mr. Griffin. I announce that the Senator from Oklahoma (Mr. Bellmon) is absent to attend the funeral of a friend.

The Senator from New Hampshire (Mr. Cotton) is absent because of illness.

The Senator from Maryland (Mr. Beall) and the Senator from Arizona (Mr. Goldwater) are detained on official business.

The result was announced—yeas 60, nays 33, as follows:

[No. 321 Leg.]

YEAS—60

Aiken
Allen
Baker
Bartlett
Bennett
Bible
Biden
Brock
Burdick
Byrd, Harry F., Jr.
Chiles
Church
Clark
Cook
Curtis
Dole
Domenici
Dominick
Eagleton
Eastland
Fannin
Fulbright
Gravel
Gurney
Hansen
Helms
Hollings
Hruska
Huddleston
Inouye
Jackson
Johnston
Long
Magnuson
Mansfield
Mathias
McClellan
McClure
McGee
McGovern
McIntyre
Metcalf
Montoya
Moss
Nunn
Pearson
Percy
Randolph
Saxbe
Scott, Pa.
Scott, Va.
Sparkman
Stafford
Stevens
Symington
Talmadge
Thurmond
Tower
Weicker
Young

NAYS—33

Bayh
Bentsen
Brooke
Buckley
Byrd, Robert C.
Case
Cranston
Ervin
Fong
Griffin
Hart
Hartke
Haskell
Hatfield
Hathaway
Hughes
Humphrey
Javits
Kennedy
Mondale
Muskie
Nelson
Packwood
Pastore
Pell
Proxmire
Ribicoff
Roth
Schweiker
Stevenson
Taft
Tunney
Williams

NOT VOTING—7

Abourezk
Beall
Bellmon
Cannon
Cotton
Goldwater
Stennis

So Mr. Stevens' amendment was agreed to.

The Presiding Officer. The bill is open to further amendment.

Mr. Fulbright. Mr. President, I send an amendment to the desk.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

> On page 66, line 12, strike "the Secretary of the Smithsonian Institution" and insert in lieu thereof "The Secretary of Agriculture."

Mr. Fulbright. Mr. President, this provision, authorizing the money to the Smithsonian Institution, was not in the original bill. It was inserted in the House, in the Subcommittee on Commerce, by Representative Dingell.

I have consulted the Smithsonian, and Mr. Michael Huxley, the Assistant Secretary, has informed me that they do not wish to pursue this; and they have suggested the substitution of the Secretary of Agriculture for the Smithsonian Institution.

The Smithsonian is interested in this subject, but they do not feel that they are in a position today to carry out the program which is here authorized, and they have suggested that the Department of Agriculture be substituted. It is my understanding that this amendment is acceptable to the chairman of the committee.

Of course, if the Department of Agriculture wishes the cooperation of the Smithsonian, I am quite sure they can obtain it, insofar as the Smithsonian's facilities will permit them to do so.

Mr. Tunney. Mr. President, it is my understanding that the amendment would enable the Department of Agriculture to contract with the Smithsonian Institution to conduct a part of the study if the Department of Agriculture felt that it was necessary—or, for that matter, to contract with any other Federal agency, State agency, or private individual for the purpose of conducting that study.

Mr. Fulbright. I see nothing to prevent that, either.

I must say that I had no notice of this matter until a couple of hours ago, and on inquiry from the Smithsonian, this is the best information I have.

Mr. Tunney. I certainly have no objection to the amendment; but I want to make clear that it is the manager's understanding that it would not prevent the Secretary of Agriculture from contracting with the Smithsonian Institution or any other group or agency for the purpose of conducting the study.

Mr. Fulbright. So far as I can see, there is nothing to prevent that. It is up to the Department of Agriculture.

Mr. Tunney. I accept the amendment, and I yield back the remainder of my time.

Mr. Fulbright. I yield back the remainder of my time.

The Presiding Officer. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment was agreed to.

The Presiding Officer. The bill is open to further amendment.

Mr. Nelson. Mr. President, I send an amendment to the desk.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. Nelson. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment is as follows:

On page 32 insert the following new subsection after Section 3(14):

"(15) 'chemical toxicant' means any chemical substance designed, intended, or employed to control or eradicate insects, rodents, predators and any other wildlife, or plants, by causing significant bodily malfunction, injury, illness, or death immediately or in the future."

On page 39, line 23, immediately before the semicolon, insert a comma and the following: "and plans to issue regulations prohibiting the use of chemical toxicants within the areas comprising such lands, waters, and interests so acquired, in a manner comparable to that provided under section 10(a)(10)."

On page 52, insert the following new subsection after section 10(a)(9):

"(10) uses any chemical toxicants within any area, comprising lands and waters, including interests therein, of the United States, which were acquired and are being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species, except that the Secretary may authorize the use of a chemical toxicant, but only if he makes a written finding which he shall publish in the Federal Register, that:

"(A) an emergency exists to the endangered or threatened species that cannot be dealt with by means which do not involve the use of chemical toxicants, and that such use is necessary for the survival of the endangered or threatened species; or

"(B) a particular method of applying a chemical toxicant will not impair the survival of an endangered or threatened species."

Mr. NELSON. Mr. President, this act is designed to stave off the extinction of our wildlife by protecting the endangered species from men who might knowingly or inadvertently harm them. Because of this act, an animal or fish species will not be overtly "taken."

Yet, it is common knowledge that there is another danger to our wildlife, a threat which is unavoidable: the expansion of our cities and industries. But we should also watch that we do not destroy the animal world, made helpless by human technology. This act acknowledges that habitat modification is liable to be increasingly prevalent as the cause of future wildlife losses. The Secretaries of Interior and Commerce are authorized to acquire the lands upon which the endangered and threatened species reside and funds are provided for this purpose. Habitat acquisition will provide a framework, a base for the construction of true sanctuaries, preserves free from harmful human intrusions. This amendment would aid in safeguarding the sanctuaries of the endangered species.

Around 10 years ago we first learned the insidiousness of chemical poisons: how the residues of herbicides, insecticides, of pesticides in general, remain and find their way into the tissue of the low members of the food chain which are consumed by the next higher and so on, until the birds and mammals of prey, representing the top of the food chain, accumulate massive concentrations of chemical poisons.

They become the victims of chemical toxicant poisoning in the form of reproductive failures, incapacitation, or death.

There are presently eight species upon the Department of the Interior's red book list of rare and endangered species, including the southern bald eagle and the California condor which have been decimated by the use of chemical toxicants. Other species like the prairie falcon will have to be added to the future endangered and threatened species list because of our widespread use of pesticides. This amendment does not cover much area, only those small preserves which are wholly dedicated to endangered species protection.

Poisons are so lethal and the existence of endangered species so precarious that we must be overly cautious to avoid chemical disasters. This amendment applies to those lands "acquired and being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species." However, the Secretary is authorized to allow the use of chemical toxicants if he finds that that use is needed to insure the survival or that such use will not at all affect the survival of an endangered or threatened species.

The amendment prohibits the use of chemical poisons upon the lands that the Federal Government and the States have and will acquire as selected habitat for the endangered or threatened species. The lands this amendment refers to are primarily those in the National Wildlife Refuge System and those lands which State Fish and Game Departments will oversee. The ratio will be even more lopsided for the lands the States will acquire under the provisions of this act. For example the California Department of Fish and Game has identified seven of its indigenous rare and endangered species of wildlife as being presently threatened by county rodent control programs and is negotiating a joint policy agreement with the California Department of Food and Agriculture so that the two Departments will cooperate more closely. In other words, the Fish and Game Department is very concerned, and with good reason, that control people in the field will not realize until it is too late that they are using chemical toxicants within the areas upon which the endangered and rare species are making their last stand.

Mr. President, this is a very simple amendment which provides that chemical toxicants, poisons, may not be used on those lands which are—

> Acquired by and are being used for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species, except that the Secretary may authorize the use of a chemical toxicant, but only if he makes a written finding which he shall publish in the Federal Register.

That the use of chemical toxicants is necessary for the purpose of protecting endangered species.

I think there is no controversy about the amendment. I ask the Senator if he is willing to accept it.

Mr. TUNNEY. Mr. President, I want to make sure I understand the amendment. Does the amendment provide that the Secretary of Interior must make a positive finding that before chemical toxicants can be used such a toxicant will protect the species or not hurt the species?

Mr. NELSON. He must file a statement saying that the use of the chemical toxicant is necessary for the purpose of protecting the endangered species. Otherwise it may not be used on sanctuary lands.

Mr. TUNNEY. Let me make sure that I understand the lands this applies to. The Senator said sanctuary lands.

Mr. NELSON. Yes. In the amendment it is described as—

> Lands acquired and being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

The Government is going to be acquiring lands under this provision and there are sanctuary lands already set aside; the amendment applies to these lands unless the Secretary says that the use of toxicants is necessary for the protection of endangered species.

Mr. TUNNEY. Are toxicants presently allowed to be used on sanctuary lands?

Mr. NELSON. For example, I think there is a case in the Senator's State where there are two different agencies. One agency used chemical poisons to kill rodents and one of the endangered birds was being poisoned by the poisons being used to kill rodents. Those two departments of the state government which were operating with conflicting purposes have now reached an agreement. But this is the kind of case that could occur. Poison could be used on same lands where you are trying to protect a species, and at the same time they are threatening the survival of the endangered species.

This provides that poison cannot be used on those lands unless the Secretary certifies that it is necessary to protect the species for which the sanctuary is in existence.

Mr. TUNNEY. What if it is a State sanctuary as contrasted with the Federal sanctuary? If it were a State sanctuary would they have to get authorization from the Secretary of the Interior?

Mr. NELSON. That is the way I interpret it.

Mr. HANSEN. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

The PRESIDING OFFICER. The Senator from Wyoming is recognized. The Senate will be in order. The Senator may proceed.

Mr. HANSEN. I am wondering about this situation. In times past, in western Wyoming, the State game and fish commission has found it advisable to employ the use of so-called coyote getters in and around elk winter feeding areas. I am not certain that has been used in national elk sanctuaries.

My question is, if in the judgment of the Fish and Wildlife Service, or the Bureau of Sports, Fisheries, and Wildlife, as it is now called, it became necessary to try to bring some effective control upon the coyote—we have trumpeter swan and waterfowl and other birds in addition to elk, which is the major big game animal in the area, although there are moose, deer, and mountain sheep—would this amendment prohibit any control of the coyote within the national elk refuge, if it is permitted, assuming it may be, if in the judgment of the Bureau of Sports, Fisheries, and Wildlife it became necessary or desirable to effect control of the coyote? Would this preclude that action unless the Secretary certified that the use of the coyote getter was to protect the endangered species?

Mr. TUNNEY. I do not know the the classification of the Elk Refuge Commission. It is clear that if it involved any lands that were being acquired under this legislation——

Mr. HANSEN. These lands have been acquired first, partly by gift. The Izaak Walton League many years ago made a grant and, from 1914 forward, the Federal Government through different measures has added to the refuge, and by purchase.

Does that answer the Senator's question?

Mr. NELSON. I am not sure it does. If the sanctuary has been created or the lands acquired for the purpose of creating a sanctuary or a wildlife habitat for an endangered species, very clearly you could not use chemical poisons on that land except upon authorization of the Secretary who would make the finding in the amendment.

I assume it would apply to the elk land referred to, but I do not know what classification they are under.

Mr. HANSEN. My purpose in asking the question is to try to have a better understanding of the amendment. I have posed a hypothetical question. I do not think for a moment this might happen, but sometimes in our enthusiasm it is easy to attain a certain objective that might tie our hands. The trumpeter swan found in that refuge were an endangered species. As far as I know, they are the only endangered species in the elk refuge. I do not think the elk refuge was established because the elk was endangered, but was an important wildlife species which deserved better year-around care than they were getting.

Mr. TUNNEY. Mr. President, I believe the Senator's amendment is designed to achieve a very desirable purpose but during the course of the hearings we never did have an opportunity to get testimony from any party with respect to chemical toxicants and the use of chemical toxicants on sanctuaries. Inasmuch as the Senator's amendment relates also to State sanctuaries and we would be imposing the will of the Secretary of the Interior on State officials as it relates to State sanctuaries. I think the matter should be subject to hearings.

Therefore for the committee, I cannot accept the amendment.

Mr. NELSON. I would like to ask a question. Is there a similar bill under consideration in the other body?

Mr. TUNNEY. Yes. The House will be considering legislation.

Mr. NELSON. On this bill, or do they have a bill of their own?

Mr. TUNNEY. They have one of their own.

Mr. NELSON. Have they finished the hearings on that?

Mr. TUNNEY. Yes.

Mr. NELSON. In view of the Senator's objection, Mr. President, I will withdraw the amendment and if they have not acted on the House side, I will have further comment.

Mr. TUNNEY. I sympathize with the purpose of the Senator's amendment, but I do not see how we can include it without hearings.

Mr. NELSON. Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on agreeing to the committee amendment, as amended, in the nature of a substitute.

The committee amendment, as amended, in the nature of a substitute was agreed to.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. ROTH. Mr. President, I am proud to lend my support to the Endangered Species Act of 1973, a long overdue piece of legislation. The time has come for us to recognize that more than one hundred species and subspecies of wildlife—fish, animals, and birds—as well as forms of plantlife, are being seriously threatened through hunting and trapping, and by man's encroachment on their natural habitats. I encourage support of S. 1983 because it refines previous legislation that this body developed and passed in 1966 and expanded upon in 1969.

The President stated in his environmental message of February 8, 1972, that the existing law "simply does not provide the kind of management tools needed to act early enough to save a vanishing species." In effect, the present law prevents the Government from taking action until a species is virtually extinct. Often, by the time something is done, it is too late to reverse the trend. I support the provisions of this bill and urge your careful consideration. Especially notable in this legislation are its provisions to create a more flexible classification and declassification system, strict civil and criminal penalties, and its acknowledgement of migratory patterns and the need for international cooperation.

The people of Delaware who admire the graceful and inspiring flight of the few American bald eagles remaining in the State, who view with awe the migratory flight of geese, ducks, and swans, hope that the Senate will look favorably upon this measure.

Mr. DOMENICI. Mr. President, today we will vote on S. 1983—the Endangered Species Act of 1973—a bill which provides for the conservation, protection and propagation of now endangered species of fish and wildlife. If implemented, this legislation will save from extinction one of our more valuable natural resources.

In recent years, many citizens of the United States have come to view the various species of wildlife as environmental indicators for their State, and, in a larger context, for the world. These citizens consider wildlife a precious natural resource which, if husbanded and protected, will be one of the factors in our natural surroundings which will endure for generations to follow. These individuals—whether they live in New York City or Chama, N. Mex.—want to be assured that there exists abundance of wildlife "somewhere" in our Nation, as well as to be assured of its continued existence.

The beautiful State of New Mexico has fought hard, although in some cases not hard enough, to protect its environment and its endangered species. The people of my State share a feeling of pride in the fact that they continually strive to preserve the natural—they strive to prevent technology from overriding the natural resources of our State.

In terms of wildlife, there has always been an endangered species for both natural and manmade reasons. Natural population fluctuations of some species have diminished their number to such a low point that they were unable to generate a continued existence. Other species have become so highly specialized that any slight alteration of the habitat spelled doom for their continued existence—experts point out that this natural phenomenon continues today. However, in the "modern age" of man, many experts claim that the possible extinction of numerous species of wildlife has increased by a tremendous factor. In many cases, "progress" for man means threatening disaster or devastating decline for a major portion of our wildlife. I feel the main thrust of our discussion on this legislation should be man's obvious detrimental effect on wildlife to the point of practically guaranteeing its extinction.

We are not here today to discuss individual blame but to plan an immediate solution to insure the life of our endangered species. The advance of man's civilization has proved to be costly to the natural environment. It is a fact that man has been the culprit in bringing certain species to the point of extinction; it would be a double indictment against humanity to ignore the present situation and allow the destruction of our resource of wildlife to continue.

How has man effected wildlife adversely? Some reasons are quite obvious and others more subtle. Many of our land-use practices have destroyed the delicate habitat necessary to maintain a healthy wildlife. Certain intensive agricultural practices, unconcerned with their harmful influence on wildlife, have brought various species to the brink of extinction. All of us in these Chambers have heard of the now infamous golden eagle killings in Colorado and Wyoming. While the golden eagle has been saved from extinction, it was through indiscriminate shooting and treatment that this species was almost lost. In New Mexico, the prairie dog towns have been so decimated that the rare and endangered black-footed ferret is nowhere to be seen. While most naturally harmful organochlorine pesticides have been banned, their effects have been detrimental to various wildlife species, Again, in New Mexico, the peregrine falcon is still trying to recover from DDT poisoning.

Also, man through commercial exploitation of a particular wildlife species has placed some animals in the endangered category. Most of you here today are aware of the disputes within the whaling industry which exist among other nations. While the legislation under consideration takes care of such problems within the United States territorial boundries, we must additionally have a procedure to intervene in such international disputes where the existence of endangered species is at stake.

Under the provisions of this act, there exists various means of recovery that can be instituted on behalf of rare and endangered species. We must demand the continued protection of prime habitat and, where feasible, renew and refurbish deteriorated species. Through the Office of Endangered Species and other Federal agencies, and with the aid and coordination of the various States' fish and game agencies, innovative and intensive programs should be initiated for all endangered species; such management will result in beneficial effects for our wildlife. Finally, various programs of captive propagation would be beneficial for rare and endangered species in order that progeny raised in captivity could be used to replenish the wildlife population.

At the same time, our governmental agencies, in cooperation with biologists and interested citizens, should continue research on the rare and endangered wildlife of our Nation. Continued investigations should be made to determine the population fluctuations of the various species. On the basis of a complete census, efforts should be made to determine which are the limiting factors at the present time and which factors in the future will affect the well-being of our wildlife resource.

Senate bill 1983 addresses itself to rare and endangered wildlife. This legislation is drafted to protect these species, and it suggests a number of ways by which this can be accomplished. Under the authority of the Secretaries of Interior and Commerce, any species which is considered rare or endangered shall be free from molestation by the threat of civil penalty. It also gives authority to the Secretaries to permit continued scientific research into the problems of endangered wildlife. With a broadening of our knowledge concerning the problems of endangered species, maybe we can turn the tide on the uncertain existence of many of these animals. I urge my colleagues in the Senate to support this legislation which will benefit the generations which follow us and our Nation as well.

Mr. PERCY. Mr. President, it is certainly encouraging to me that the Senate is about to move promptly and hopefully unanimously upon S. 1983, the Endangered Species Act of 1973. For too long there has been insufficient means to protect and preserve all the valuable species of wildlife that contribute so much to the quality of life as we know it. S. 1983 will provide the tools we need both to protect animals that are presently endangered and to take the necessary precautions so that additional species are not reduced to the endangered level.

Action in this field reflects both an increased awareness of man's place in the ecosystem and the healthy respect that that awareness must engender. I am pleased that the Senate will take positive action with the adoption of S. 1883 and I am confident that this legislation will go a long way toward preserving our valuable and unfortunately perishable wildlife.

It is my pleasure to report that the State of Illinois has taken a lead in the area of endangered species with the passage of vigorous legislation earlier this year and will have no trouble in complying with the new Federal regulations.

The PRESIDING OFFICER. The bill has been read the third time. The question now is, shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. Cannon) is necessarily absent.

I further announce that the Senator from South Dakota (Mr. Abourezk) is absent on official business.

I also announce that the Senator from Mississippi (Mr. Stennis) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. Abourezk) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. Bellmon) is absent to attend the funeral of a friend.

The Senator from Utah (Mr. Bennett) is necessary absent.

The Senator from New Hampshire (Mr. Cotton) is absent because of illness.

The Senator from Maryland (Mr. Beall) and the Senator from Arizona (Mr. Goldwater) are detained on official business.

The result was announced—yeas 92, nays 0, as follows:

[No. 322 Leg.]

YEAS—92

Aiken
Allen
Baker
Bartlett
Bayh
Bentsen
Bible
Biden
Brock
Brooke
Buckley
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Case
Chiles
Church
Clark
Cook
Cranston
Curtis
Dole
Domenici
Eagleton
Eastland
Ervin
Fannin
Fong
Fulbright
Gravel
Griffin
Gurney
Hansen
Hart
Hartke
Haskell
Hatfield
Hathaway
Helms
Hollings
Hruska
Huddleston
Hughes
Humphrey
Inouye
Jackson
Javits
Johnston
Kennedy
Long
Magnuson
Mansfield
Mathias
McClellan
McClure
McGee
McGovern
McIntyre
Metcalf
Mondale
Montoya
Moss
Muskie
Nelson
Nunn
Packwood
Pastore
Pearson
Pell
Percy
Proxmire
Randolph
Ribicoff
Roth
Saxbe
Schweiker
Scott, Pa.
Scott, Va.
Sparkman
Stafford
Stevens
Stevenson
Symington
Taft
Talmadge
Thurmond
Tower
Tunney
Weicker
Williams
Young

NAYS—0

NOT VOTING—8

Abourezk
Beall
Bellmon
Bennett
Cannon
Cotton
Goldwater
Stennis

So the bill (S. 1983) was passed, as follows:

S. 1983

An act to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Ac of 1973".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Conservation on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Conservation" and "management" mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms when and where appropriate, is the protection, propagation, conservation and restoration of such species including regulation and taking necessary to these ends.

(2) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(3) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range, other than a species of the order insectica determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(4) "Fish or wildlife" means any living member of the animal kingdom and remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(5) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(6) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(7) "Optimum carrying capacity" means the ability of a given habitat to support the optimum sustainable population of an endangered or in a healthy state without diminishing the ability of the habitat to continue that function threatened species.

(8) "Optimum sustainable population" means, with respect to any of endangered or threatened species, the number of such species which will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent part.

(9) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(10) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(11) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of plants, the term means the Secretary of Agriculture.

(12) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature

(13) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(14) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(15) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(16) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(17) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretaries shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the State. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, made recommendations to the Secretary with respect to removal from, addition to, or reclassification within the lists maintained pursuant to subsection (a) of this section and may, with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than $150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) PROTECTIVE REGULATIONS.—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation and management of such species. With respect to any threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

SEC. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him;

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation and management of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) FINANCIAL ASSISTANCE.—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the conservation and management of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has statutory and regulatory authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs, which are adequate, in the Secretary's judgment, for the conservation and management of species of endangered and threatened fish or wildlife;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation and management of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, conservation and management. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

(C) the number of endangered and threatened species within a State;

(D) the potential for restoring endangered and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year shall remain available for expenditure by such State until the close of the succeeding fiscal year. Any funds remaining unobligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66⅔ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation regarding the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such actions as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, or propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The

Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) PROCEDURE.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: *Provided*, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) JUDICIAL REVIEW.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, no stay of an action may be granted unless the reviewing court determines that the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order.

(d) AUDIT.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in paragraph (1) of this subsection of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

SEC. 10. (a) PROHIBITED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce any endangered species of fish or wildlife;

(6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulation which is promulgated by the Secretary pursuant to section 4(e) of this Act; or

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption, or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas.

To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this act if he finds that--

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attemping to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(c) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this act.

EXCEPTIONS

SEC. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this act for—

(1) for scientific purposes in furtherance of the purposes of this act; or

(2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat.

(b)(1) HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception will cause undue economic hardship: *Provided*, That such exception shall be granted any non-Native resident of an Alaska Native village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles of handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified by the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish and wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of a proposed listing of such species as an endangered or threatened species.

(B) Substantial economic loss to persons who, for the year prior to the listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or

(C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) PROCEDURE.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such endangered or threatened species and will be consistent with the policy of this Act.

(d) ALASKA NATIVES.—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaskan native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic native articles of handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species, and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aluet, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—

(A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation.

No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATION.—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection.

The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation made pursuant to this section of any lease, license, permit, stamp, or other agreement.

(c) Rewards.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(d) Enforcement.—(1) The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the cutsoms laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) Registration.—(1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife; and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) ENFORCEMENT REGULATIONS.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing and services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614 and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles. No proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

Sec. 13. The Secretary of Agriculture, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed $250,000.

CONFORMING AMENDMENTS

Sec. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species.".

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

"Threatened Species.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction." and inserting in lieu thereof the following:

"Endangered and Threatened Species.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 406k–1), is amended to read as follows:

"Sec. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish- and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation area, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91–135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

SEC. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6) is repealed.

APPLICABILITY WITHIN STATES

SEC. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: *Provided*, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a State which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may by regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the conservation and management of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $3,960,000 for the fiscal year ending June 30, 1974; not to exceed $6,660,000 for the fiscal year ending June 30, 1975; and not to exceed $8,870,000 for the fiscal year ending June 30, 1976.

SEC. 19. (a) That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(b)), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

(b) As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however*, That correction of clerical and typographical errors in such legal description and map may be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture.

(c) The wilderness area designated by this Act shall be known as the Cave Run Wilderness and shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions, to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(d) Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zilpo recreation site access road generally on a route extending northward from Forest Development Road Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

The title was amended, so as to read: "A bill to provide for the conservation, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes."

Mr. TUNNEY. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the bill, S. 1983, which was just passed.

The PRESIDING OFFICER. Without objection, it is so ordered.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 93-740

ENDANGERED SPECIES ACT OF 1973

DECEMBER 19, 1973.—Ordered to be printed

Mrs. SULLIVAN, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1983]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1983), to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Endangered Species Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species.
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endangered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.
Sec. 17. Marine Mammal Protection Act of 1972.

FINDINGS, PURPOSES, AND POLICY

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

- *(A) migratory bird treaties with Canada and Mexico;*
- *(B) the Migratory and Endangered Bird Treaty with Japan;*
- *(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;*
- *(D) the International Convention for the Northwest Atlantic Fisheries;*
- *(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;*
- *(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and*
- *(G) other international agreements.*

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key in meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) Purposes.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy.—It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.

(2) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are

necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(3) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(4) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(5) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(6) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(7) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(9) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(10) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(11) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

(12) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(13) The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

(14) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(15) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(16) The term "United States", when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species,

he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(b) BASIS FOR DETERMINATIONS.—(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

(c) LISTS.—(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list in effect on the day before the date of the enactment of this Act of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this Act, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this Act. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5, United States Code.

(d) PROTECTIVE REGULATIONS.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(a) of this Act only to the extent that such regulations have also been adopted by such State.

(e) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f) REGULATIONS.—(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(2)(A) In the case of any regulation proposed by the Secretary to carry out the purposes of this Act—

(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

(ii) if any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the Federal Register.

(B) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following

regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

(i) Any regulation appropriate to carry out the purposes of this Act which was originally promulgated to carry out the Endangered Species Conservation Act of 1969.

(ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b)(A), (B), and (C) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a statement by the Secretary of the facts on which such regulation is based and the relationship of such facts to such regulation.

LAND ACQUISITION

SEC. 5. (a) PROGRAM.—The Secretary of the Interior shall establish and implement a program to conserve (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 4 of this Act; or (B) plants which are included in Appendices to the Convention. To carry out such program, he—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) ACQUISITIONS.—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened

species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c) *Cooperative Agreements.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—*

(*1*) *authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;*

(*2*) *the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;*

(*3*) *the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;*

(*4*) *the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species; and*

(*5*) *provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened.*

(d) *Allocation of Funds.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—*

(*A*) *the international commitments of the United States to protect endangered species or threatened species;*

(*B*) *the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;*

(*C*) *the number of endangered species and threatened species within a State;*

(*D*) *the potential for restoring endangered species and threatened species within a State; and*

(*E*) *the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.*

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized *to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.*

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS.—Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS.—Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION.—(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any

resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS.—For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,000,000.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall *provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.*

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

PROHIBITED ACTS

SEC. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(C) sell or offer for sale in interstate or foreign commerce any such species; or

(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from the effective date of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on such effective date.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) *IMPORTS AND EXPORTS.—(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.*

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) *REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.*

(f) *DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.*

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

Sec. 10. (a) Permits.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

(b) Hardship Exemptions.—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

> *(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;*
>
> *(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or*
>
> *(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.*

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this

section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) N*OTICE* A*ND* R*EVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.*

(d) P*ERMIT AND* E*XEMPTION* P*OLICY.—The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.*

(e) A*LASKA* N*ATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—*

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after

a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

PENALTIES AND ENFORCEMENT

SEC. 11. (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F), (a)(2) (A), (B), or (C), (c), (d) (other than a regulation relating to recordkeeping or filing of reports), (f) or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitied or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATIONS.—(1) Any person who willfully commits an act which violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F); (a)(2) (A), (B), or (C), (c), (d) (other than a regulation relating to recordkeeping or filing of reports, (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

Any person who willfully commits an act which violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(e) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating

pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

> *(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or*
>
> *(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State.*

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision *or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.*

(2) (A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency.)

(h) COORDINATION WITH OTHER LAWS.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

Sec. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONFORMING AMENDMENTS

Sec. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following. "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,".

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l—9(a)(1)) is amended by striking out:

> *"Threatened Species.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."*

and inserting in lieu thereof the following:

> *"Endangered Species and Threatened Species.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants."*

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k–1), is amended to read as follows: "The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

> *"(1) incidental fish and wildlife-oriented recreational development,*
>
> *"(2) the protection of natural resources,*
>
> *"(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or*
>
> *"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."*

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91–135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc–6), is repealed.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed $4,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 and not to exceed $10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed $2,000,000 for fiscal year 1974, $1,500,000 for fiscal year 1975 and not to exceed $2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

EFFECTIVE DATE

SEC. 16. This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the bill, insert the following: "An Act to provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes."

And the House agree to the same.

LEONOR K. SULLIVAN,
JOHN D. DINGELL,
GEO. A. GOODLING,
Managers on the Part of the House.

PHILIP A. HART,
JOHN V. TUNNEY,
TED STEVENS,
FRANK E. MOSS,
MARLOW W. COOK,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes submit the following statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House struck out all of the Senate bill after the enacting clause and inserted a substitute amendment. The committee of conference has agreed to a substitute for both the Senate bill and the House amendment. Except for technical, clarifying and conforming changes, the following statement explains the resolution of differences between the Senate bill and the House amendment thereto.

PROVISIONS OF THE CONFERENCE SUBSTITUTE

Section 3. Definitions

The Senate bill contained language defining the term "conservation and management" as these concepts relate to endangered species: the House bill did not. In view of the varying responsibilities assigned to the administering agencies in the bill, the term was redefined to include generally the kinds of activities that might be engaged in to improve the status of endangered and threatened species so that they would no longer require special treatment. The concept of conservation covers the full spectrum of such activities: from total "hands-off" policies involving protection from harassment to a careful and intensive program of control. In extreme circumstances, as where a given species exceeds the carrying capacity of its particular ecosystem and where this pressure can be relieved in no other feasible way, this "conservation" might include authority for carefully controlled taking of surplus members of the species. To state that this possibility exists, however, in no way is intended to suggest that this extreme situation is likely to occur—it is just to say that the authority exists in the unlikely event that it ever becomes needed.

The Senate added an exception allowing an exclusion from the protection provided by the Act where an otherwise endangered or threatened species of insect presented an overwhelming and overriding risk to man; the House had no such exception. The conferees accepted the Senate language with a technical change, acknowledging that the likelihood of this exception ever being used was vanishingly small but being unwilling to tie the Secretary's hands if such an unlikely event were ever to come to pass.

Also added to the section was a new definition of "commercial activity," to delineate the types of activities which would qualify for special treatment under the Act. It includes trades and exchanges of animals or products from those animals wherever those trades or exchanges are undertaken in the pursuit of any gain or profit.

There was considerable discussion in the conference as to the proper assignment of responsibilities between the Departments of Commerce and the Interior with respect to marine species, general authority for the management of which had been transferred to the Department of Commerce under Reorganization Plan No. 4 of 1970. The roles of the Departments had not been specifically set out in either bill, whereas the legislative history of the bills included much language that was ambiguous and some that was contradictory. The conferees resolved the issue by placing general management and regulatory responsibility for such species in the Department of Commerce, in most respects parallel to that which has resided in the Interior Department for other species of fish and wildlife.

The physical act of maintaining the list is in the Department of the Interior. That Department continues to be solely responsible for determining of status of species not assigned to Commerce under the 1970 Reorganization Plan. If Commerce concludes that any species under its authority should be put on the list of endangered or threatened species, or that any such species now listed as threatened should be relisted as endangered, it may take the necessary steps under Section 4 and then inform the Secretary, who will promptly and automatically revise the lists under his control. If Commerce concludes, on the other hand, that species should be taken off the present or any later list or changed in status from endangered to threatened, it must so recommend to Interior, after having taken the necessary procedural steps; Interior may concur, in which case the lists will be revised accordingly, or it may disagree, in which case no action will be taken unless and until the deadlock is subsequently broken.

The Secretary of the Interior will continue to have sole authority to designate ports of entry under Section 9(f) of the bill and to handle the processing of imported and exported goods. It is expected that there will be adequate coordination with the Department of Commerce in order to see that no violations of the law will take place with respect to the species over which Commerce has jurisdiction. The Secretary of the Interior will also continue to have sole responsibility for the responsibilities outlined in Section 5 of the Act, dealing with land acquisition with funds from the Land and Water Conservation Act. In all other respects, the responsibilities and authorities for different species will be controlled by the 1970 Reorganization Plan, except insofar as the agencies may themselves later elect to adjust their responsibilities by mutal agreement. When and if a Department of Natural Resources is ever created, then of course these two lines of authority will merge and this problem will cease to exist. In this regard, the conferees expect that every effort will be made by both agencies, and indeed all agencies of government, to eliminate wasteful duplication of effort and unnecessary dual regulatory programs.

Section 4. Determination of endangered species and threatened species

Prior to determining the status of a given species, both bills require the Secretary to engage in extensive consultations with all affected parties. In addition the Senate bill required consultation with a special Advisory Committee created for that purpose; the House had no such body. The conferees agreed upon language which eliminated the need for such a body, by requiring special notification of the Governor of each state within which the species under consideration is then known to occur, simultaneous with public notification that such a review was in process, and requiring a minimum of 90 days for the state to respond unless that period was shortened.

If a given species were found and taken in two or more states, each state should be consulted; in the case of an emergency the Secretary could, upon the agreement of all, or with respect to any individual state with the consent of the Governor of that state, declare the existence of that emergency and publish appropriate regulations, as provided in the regulations subsection. The comments of the state would have to be published in summary form prior to the time the Secretary made his final determination.

The Senate bill followed in part and differed in part from the otherwise controlling Administrative Procedures Act; the House bill did not discuss the issue and thereby adopted the APA. Some apprehensions were expressed by the enforcement agencies that the variations required from normal practice might make day-to-day operations extremely complicated. While little disagreement was expressed in conference as to the ultimate objectives of the Senate provision of notice of proposed actions, coupled with an opportunity for full public participation, the means which had been proposed was criticized as unnecessarily cumbersome.

The conferees rewrote Section 9 of the Senate bill and included it as subsection 4(f). The new subsection extends the period of public notice, provides for discretionary hearings, and establishes procedures whereby emergency action may be taken for a short period, which period may be extended only if the Secretary later goes through the prescribed regulatory procedures. The subsection also requires the Secretary to state in detail the basis for proposed regulations, and the reason for denial of requested hearings.

Section 5. Land acquisition

Any effective program for the conservation of endangered species demands that there be adequate authority vested in the program managers to acquire habitat which is critical to the survival of those species. Both the House and the Senate bills provided such authority, but the Senate bill restricted that authority to habitat for fish and wildlife alone. The conferees accepted the House version, which extended the authority to acquire plant habitat, but expect that this authority will be used sparingly, in cases where the needs of the situation are clear. This authority is restricted to the Secretary of the Interior alone, but it is anticipated that he will consult with the Secretary of Commerce in cases involving the marine species over which Commerce has sole jurisdiction under Reorganization Plan No. 4.

Section 6. Cooperation with the States

The House placed the fundamental responsibility for establishing and overseeing an endangered species program in the federal government, but provided for the development of cooperative programs upon agreement with the agencies concerned. The Senate provided for cooperative state and federal programs but gave the initial responsibility to the states in section 16 of its bill.

As finally approved, the Act will have the effect of giving the states fundamental roles with regard to resident species for a given period of time (15 months, or 120 days after adjournment of the first legislative session of any state which commences after passage of the Act). The conferees hope that this device will impel the states to develop strong programs to avoid the alternative of federal preemption.

Following the establishment period, during which it is expected that the states will adjust to the new federal program, the law will apply as it would have under the House bill. Where cooperative agreements are in force, these will of course direct and control the enforcement of endangered and threatened species programs. Where none are then in effect, it will be the responsibility of the states to develop workable programs and to secure cooperative agreements with the Secretary.

Both bills provided for a grant program to enable the states to develop systems for conserving endangered and threatened species. The House bill provided open-ended appropriations whereas the Senate bill authorized the sum of $10 million over a 3½ year period; the House authorized a larger federal share of assistance; and the Senate bill restricted unobligated grant authority to other grant programs under the section. The conferees accepted the Senate version in all respects save that relating to the federal percentage of cost-sharing agreements.

During the establishment period, the states retain authority to regulate the taking of resident endangered and threatened species of fish and wildlife (which are not otherwise covered by treaty or federal law). The only exceptions to this are found where the state has entered into and is operating under a valid cooperative agreement, which then controls, or the state has requested the federal government to extend federal protection to one or more species under the Act, or the Secretary finds that an emergency exists requiring immediate and unilateral action to respond. In this last case, the Secretary has discretion to suspend the state laws for 90 days, or longer if extended pursuant to Section 4(f), pending an agreement on how matters are to be handled in the future.

It should be noted that the successful development of an endangered species program will ultimately depend upon a good working arrangement between the federal agencies, which have broad policy perspective and authority, and the state agencies, which have the physical facilities and the personnel to see that state and federal endangered species policies are properly executed. The grant program authorized by this legislation is essential to an adequate program. Since the federal government is directing new, innovative and perhaps expensive programs, it seems only fair that it should also bear a significant portion of their costs. The conferees wish to make it clear that the grant authority must be exercised if the high purposes of this legislation are to be met.

Section 8. International cooperation

Both bills authorized international endangered species programs but the Senate restricted those programs to countries in which counterpart funds are available, while the House stipulated that where such funds were available, they should be used in preference to appropriated funds under Section 15 of the Act. The Senate receded on this issue.

The House allowed foreign assistance programs which related to plants as well as to fish and wildlife; the Senate bill did not extend to plants. The House receded on this issue.

Section 9. Prohibited acts

Both bills prohibit certain actions which relate to endangered or threatened species, or to products or parts from such species. These prohibitions are carried into the conference bill.

While the House bill extended the prohibitions of the Act to actions of persons subject to U.S. jurisdiction whenever they might occur, the Senate bill did not reach quite so far, since it did not make illegal such actions if performed entirely with one or more foreign countries. The House accepted the Senate bill in the absence of a demonstrated need for such extensive coverage.

The Senate bill restricted the prohibitions of the Act so as not to apply them to species held in captivity or in a controlled environment as of the date of enactment; the House bill was silent on the subject and hence included such animals. As drafted, the Senate language may have made it very difficult, and perhaps even impossible, to enforce the action. The real problems envisioned by the Senate had to do with live animals in captivity, such as zoos and privately-owned animal products, and the conferees agreed that these animals are rarely transferred for commercial purposes.

The conferees rewrote the provision to create an affirmative defense with respect to noncommercial activities, permitting a qualified person to plead in defense to a charge of violation of the Act that the goods or animals themselves were in their hands or under control on the effective date of the Act. Only persons holding such goods and animals for other than commercial purposes would be enabled to plead this subsection as a defense, such as noncommercial zoos, private collectors of animals and the owners of fur coats and rugs. The section would not apply in the case of later born progeny of animals alive at the time of enactment.

The section was also rewritten in part to clarify the situation with respect to endangered or threatened species of plants. Under the terms of the Convention, this country is obligated to control importations and exportations of plants as well as fish or wildlife. Accordingly the prohibitions of the Act relate, with respect to plants, to import and export situations alone, as well as to associated actions. The determination of what further must be done in connection with internal activities relating to endangered or threatened species of plants must await the outcome of the study to be conducted under Section 12 in the coming year.

Section 10. Exceptions

The Senate bill contained extensive language providing exceptions for certain Alaskan native and nonnative residents, to take endangered or threatened species for purposes of subsistence or for native handicrafts. The House bill provided no similar exception.

The conferees rewrote the section and provided an Alaska native and nonnative exception; the House receded on the basis of the language in Section 6 which would allow the State of Alaska to restrict native and nonnative taking as a part of or independent from a state endangered species program. This appears to meet the principal state objection to special language for groups of citizens, since the state may impose additional restrictions upon those or other groups, if it chooses to do so. The definition of natives is considered to be that contained in the recent Alaska Native Land Claims Settlement Act.

Section 11. Penalties and enforcement

The House bill carried a two-tiered civil penalty provision, with a limit of $10,000 for violations of certain specified requirements, and a lesser penalty for violation of other requirements of a regulatory nature. The Senate followed the same general pattern, but varied the requirements somewhat. The conferees developed new language, subjecting knowing or commercial violators to the full $10,000 penalty, where specified offenses were proven, and to a $5,000 penalty to cases where regulatory violations were proven. A third penalty of $1,000 may be assessed against an ignorant violator, such as a casual hunter or tourist, although the conferees expect that this penalty will seldom be invoked, coupled as it would be with automatic forfeiture of the goods concerned, unless special circumstances were shown warranting such action by the Secretary. For a casual tourist who bought an item with no hint of its illegality or impropriety, simple forfeiture should prove to be an ample deterrent.

The House bill provided authority to agents of the Secretary to inspect packages and crates upon importation or exportation; the Senate bill did not. This authority is parallel to that which already is exercised by customs agents and which has even been assessed by Interior agents under existing law. The Department of the Interior claims such authority is a practical requirement if the law is to be enforced and that it will be no more abused in the future than it has in the past.

The conferees accepted the House language but stressed that they were prepared to reexamine that decision in the future if it should appear that the authority was being abused.

Section 12. Endangered plants

While the Act, as finally approved, is broad enough to comply fully with this country's obligations under the recently approved Convention, it was felt that further efforts should be undertaken to ensure adequate controls upon interstate commerce in endangered species of plants, as well. Both bills provided for a study of the problems, with recommendations as to how best to proceed to come from the agency charged with responsibility for the study. The conferees accepted the House version, which assigned this function to the Smithsonian, as an institution with no bias in the eventual outcome of the study.

Section 15. Authorization of appropriations

Both bills carried authorization authority for a three-year period, ending with fiscal year 1976. The House ceiling was somewhat higher than the Senate ceiling, and divided the authorizations between the two departments principally concerned. The conferees accepted the House ceilings, but assigned $2 million of the authorizations which had originally been earmarked for the Interior Department for fiscal year 1974 to the Commerce Department for the same year.

Section 17. Marine Mammal Protection Act of 1972

The Senate bill contained a section which stated that, wherever a conflict between the Endangered Species Act and the recent Marine Mammal Protection Act might occur, the stricter of the two will prevail. This would allow, for example, state regulation of the taking of marine mammals, once these were declared endangered or threatened, without that state having a fully approved marine mammal program, as it would otherwise be required to do under the Marine Mammal Protection Act. The House accepted the Senate provision.

Kentucky National Forest Road

The Senate bill contained a section added on the Floor by Senator Cook which would have had the effect of prohibiting the construction of a public road through the Pioneer Weapons Hunting Area in the Daniel Boone National Forest. Opponents of the road fear that its construction will do irreparable damage to the area and urge the construction of a more expensive road to go around the Hunting Area. Proponents of the road respond that it will not destroy the character of the area and will be desirable. The House recently adopted an amendment to the Water Resources Development Act which, if enacted, would allow construction of the road after public review of the final NEPA environmental impact statement.

In light of the considerable controversy on the subject, the conferees felt that this issue ought not to be resolved by inclusion of this section in the bill, but that it would be more appropriate for full hearings to be held on the question by the proper Committees of Congress. Accordingly the section was stricken from the bill with the understanding and hope that such hearings might be expeditiously completed.

LEONOR K. SULLIVAN,
JOHN D. DINGELL,
GEO. A. GOODLING,
Managers on the Part of the House.

PHILIP A. HART,
JOHN V. TUNNEY,
TED STEVENS,
FRANK E. MOSS,
MARLOW W. COOK,
Managers on the Part of the Senate.

[From the Congressional Record, Dec. 19, 1973]

Senate Agreement to Conference Report

Endangered Species Act of 1973—Conference Report

Mr. Tunney. Mr. President, I submit a report of the committee of conference on S. 1983, and ask for its immediate consideration.

The Vice President. The report will be stated by title.

The second assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The Vice President. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report, which reads as follows:

Conference Report

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1983), to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Endangered Species Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species.
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endangered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.
Sec. 17. Marine Mammal Protection Act of 1972.

FINDINGS, PURPOSES, AND POLICY

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community of conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.

(2) The term "conserve," "conserving," and "conservation" means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(3) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(4) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(5) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(6) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(7) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(9) The term "plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof.

(10) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(11) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

(12) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(13) The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

(14) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(15) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(16) The term "United States," when used in a geographical context, includes all States.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(b) Basis for Determinations.—(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

(c) Lists.—(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list in effect on the day before the date of the enactment of this Act of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this Act, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this Act. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5, United States Code.

(d) Protective Regulations.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(a) of this Act only to the extent that such regulations have also been adopted by such State.

(e) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f) REGULATIONS.—(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(2)(A) in the case of any regulation proposed by the Secretary to carry out the purposes of this Act—

(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

(ii) of any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request but shall, if he denies such request, publish his reasons therefor in the Federal Register.

(B) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

(i) Any regulation appropriate to carry out the purposes of this Act which was originally promulgated to carry out the Endangered Special Conservation Act of 1969.

(ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b)(A), (B), and (C) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a statement by the Secretary of the facts on which such regulation is based and the relationship of such facts to such regulation.

LAND ACQUISITION

SEC. 5. (a) PROGRAM.—The Secretary of the Interior shall establish and implement a program to conserve (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 4 of this Act; or (B) plants which are included in Appendices to the Convention. To carry out such program, he—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservative Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Acquisitions.—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

Sec. 6. (a) General.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) Management Agreements.—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreement shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c) Cooperative Agreements.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(1) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(2) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish and wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(4) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species; and

(5) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened.

(d) Allocation of Funds.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS.—Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS.—Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION.—(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the wellbeing of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; by such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS.—For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,000,000.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

INTERNATIONAL ASSISTANCE

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research, and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

PROHIBITED ACTS

SEC. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(C) sell or offer for sale in interstate or foreign commerce any such species; or

(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from the effective date of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on such effective date.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) Imports and Exports.—(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) Reports.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plans to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) Designation of Ports.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

Sec. 10. (a) Permits.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village; if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing: except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic" native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

PENALTIES AND ENFORCEMENT

SEC. 11. (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F), (a)(2), (A), (B), or (C), (c), (d) (other than a regulation relating to recordkeeping of filing of reports), (f) or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary,

or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATIONS.—(1) Any person who willfully commits an act which violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), or (C) (c), (d) (other than a regulation relating to recordkeeping or filing of reports, (f) or (g) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who willfully commits an act which violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(e) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of any action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection: except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit, commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency.)

(h) Coordination With Other Laws.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal qurantine laws (21 U.S.C. 101–105, 111–135b and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

Sec. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONFORMING AMENDMENTS

Sec. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C 668dd(e)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,".

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C 4601—9(a)(1)) is amended by striking out:

"Threatened Species.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction."

and inserting in lieu thereof the following:

"Endangered Species and Threatened Species.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k–1), is amended to read as follows:

"The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91–135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc–6), is repealed.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed $4,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 and not to exceed $10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed $2,000,000 for fiscal year 1974, $1,500,000 for fiscal year 1975 and not to exceed $2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

EFFECTIVE DATE

SEC. 16. This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the bill, insert the following: "An Act to provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes."

And the House agree to the same.

PHILIP A. HART,
JOHN V. TUNNEY,
TED STEVENS,
FRANK E. MOSS,
MARLOW W. COOK,
Managers on the Part of the Senate.
LEONOR K. SULLIVAN,
JOHN D. DINGELL,
GEORGE A. GOODLING,
Managers on the Part of the House.

Mr. TUNNEY. Mr. President, today, the Senate will complete action on the Endangered Species Act of 1973. Hopefully, the measure will soon clear the House and be sent to the President.

As floor manager of the bill last July, and as a Senate conferee, I know how much time and effort has gone into this bill. I believe the staff members of the Senate Commerce Committee and the House Merchant Marine and Fisheries Committee should be commended for their efforts. There were difficult problems to resolve because the legislation was technically and geographically complex. But I believe that the final product will greatly improve our ability to protect species of fish and wildlife which are in imminent danger.

The conferees recognized the fact that the Federal Government simply does not have the resources to implement the act immediately, and thus set up a system of grants-in-aid to the States which will have the initial responsibility for management of resident species.

An important provision of the bill delegates listing of endangered species to the managing agencies—the National Oceanographic and Atmospheric Administration and the Interior Department. The Commerce Department may list species, but is prohibited from delisting without NOAA and Interior concurrence.

The bill established provides stiff penalties for violations.

This bill has been long in coming and is urgent in nature. In this country alone, there are over 100 species listed as endangered. Each provides a service to the environment and represents a part of an immensely complicated ecological system.

Passage of this act means that the Congress has responded positively to the magnitude of the problem and has voiced its concern for the species which we have placed near extinction. The Endangered Species Act responds to our duty to restore and propagate what we have—through carelessness and lack of understanding—nearly destroyed forever.

Mr. STEVENS. Mr. President, I support this conference report.

In conference with the House, agreement was reached on S. 1983 which we recommend to the Senate as a means of providing for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife and plants.

I wish to briefly outline the main provisions of the conference report before us.

First, the bill will define the term "conservation" to include all methods and procedures necessary to bring a threatened or endangered species to a point where the measures provided in this are no longer necessary.

There is an exception allowing exclusion from protection by the act where an otherwise endangered or threatened species of insect presents a serious risk to man. A new definition of "commercial activity" delineates types of activities, including trades and exchanges of animals or animal products involving profit, which are to be treated under the act.

The conference committee discussed at length the proper area of responsibility for the Departments of Interior and Commerce. Consequently, the act specifies that the Departments have responsibilities, in determining and changing the status of the species as endangered or threatened, along the lines of Reorganization Act No. 4 of 1970. The physical act of maintaining the list will remain, as it is now, with the Department of the Interior. The conferees ask that every effort be taken to avoid duplication of effort by the two agencies.

Considerable concern was demonstrated in conference over the necessity for effective Federal consultation with all affected parties in determining a species to be endangered or threatened. The Senate bill required a special advisory committee with heavy State representation, for this purpose. The House did not. The conferees agreed that the Advisory Committee be eliminated from the bill but that consultation be strengthened to include special notification of the Governors of the affected States, along with public notification, and that the State be given a minimum of 90 days to comment.

The conferees strengthened the procedures for public participation by requiring an extended period of public notice of proposed regulation, not less than 60 days, providing for discretionary hearings, and establishing procedures for emergency action.

Recognizing that effective programs for the conservation of endangered species requires the acquisition of habitat crucial to the species, both bills provided such authority. The Senate bill limited that authority to habitat for fish and wildlife alone. The conferees adopted the House version, which extends the authority to include plant habitat. Authority is extended to the Secretary of the Interior, but it is anticipated that he will consult with the Secretary of Commerce in cases involving marine species over which Commerce has sole jurisdiction under Reorganization Plan No. 4. Furthermore, nothing prevents the Secretary of Commerce from seeking specific legislative authority to acquire land needed for NOAA's programs.

Initially, the House bill placed basic responsibility for establishing and administering the endangered species program in the Federal Government, and provided for the development of cooperative programs with concerned agencies.

The Senate accepted this and added a new section 16 onto the bill to shift basic responsibility back to the States. The conferees approved a section giving the States the fundamental roles regarding resident species for up to 15 months, or 120 days after the relevant State legislature has adjourned. This, it is hoped, will encourage the States to develop their own strong programs.

Both bills provided grant programs for the States, but the Senate authorized \$10 million over a 3½ year period while the House provision was open-ended. The Senate version was accepted by the conferees.

The House and Senate bills each authorized international endangered species programs, but the Senate restricted the programs to countries where counterpart funds are available. The conferees adopted the House version which stipulates that where counterpart funds are available they will be used in preference to appropriated funds.

The conferees rewrote the section providing exceptions for certain Alaska natives generally following the lines of the Senate bill, which provides similar exceptions for certain non-native residents of native communities. The House receded to the Senate in allowing the State of Alaska to restrict native and non-native taken as part of a State operated endangered species program. Although the native exemption is not intended to supercede the Marine Mammal Protection Act of 1973 it does allow the taking of marine mammals under certain circumstances.

The conferees developed new language in the penalties and enforcement section, mainly to strengthen the delineation of penalties for knowing or commercial violation as opposed to erroneous casual purchase of items by tourists.

House language was adopted providing for agents of the Secretary of the Interior to inspect packages and crates upon importation or exportation, similar to the authority now exercised by customs agents. The Conferees stressed that they are prepared to reexamine this section in the near future, to ensure that the authority is not being abused.

The conferees accepted a House version of the bill assigning the Smithsonian Institution to study any problems in interstate commerce in endangered species of plants.

Mr. President, I ask this Senate to support this conference approved Endangered Species Act of 1973. There should be no further delay in extending protection for those animals which cannot fend for themselves against the destructive actions of mankind.

Mr. COOK. Mr. President, the Senator from Kentucky secured an amendment on this bill, as the Senator from California well knows, having been manager of the bill during that time. I would like to read into the Record certain language from page 18 of the report of the managers, which reads as follows:

> The Senate bill contained a section added on the Floor by Senator Cook which would have had the effect of prohibiting the construction of a public road through the Pioneer Weapons Hunting Area in the Daniel Boone National Forest. Opponents of the road fear that its construction will do irreparable damage to the area and urge the construction of a more expensive road to go around the Hunting Area.

By the way, I might say for the benefit of the record that the increased expense, as far as I know, would be in the neighborhood of \$6,000, out of a contract totaling approximately \$1,990,000.

> Proponents of the road respond that it will not destroy the character of the area and will be desirable. The House recently adopted an amendment to the Water Resources Development Act, which, if enacted, would allow construction of the road after public review of the final NEPA environmental impact statement.

In light of the considerable controversy on the subject, the conferees felt that this issue ought not be resolved by inclusion of this section in the bill, but that it would be more appropriate for full hearings to be held or the question by the proper Committees of Congress. Accordingly the section was stricken from the bill with the understanding and hope that such hearings might be expeditiously completed.

Mr. President, I am totally and completely in accord with the language of the conference report. I merely wished to read this statement into the Record for the purpose of reaffirming this Senator's position in regard to this project and its impact.

I thank the Senator from California that, during the course of the conference, we were able to work this arrangement out, and I have no objection to the immediate consideration of the conference report and its immediate passage.

Mr. TUNNEY. Mr. President, I would like to say, as the floor manager of the bill and one of the conferees, that I support hearings on the matter that was raised by the distinguished Senator from Kentucky at the earliest possible date next year. I do not see any reason why we could not do it in either January or February of next year, and then take that bill up in an expeditious fashion after hearings have been held. I know I am not only speaking for myself, but also for the other Senators on the majority side of our committee.

I am convinced that as a result of the understanding of the problem of the conference committee by the Senator from Kentucky, we were able to conclude that conference, and conclude it in a way that I think has justified not only the position of the Senator from Kentucky on the matter that he has related, but also the fact that the Senate and the Congress wanted to have this endangered species bill passed as quickly as possible, before the end of this year.

Mr. COOK. Mr. President, I thank the Senator from California, and I appreciate the indulgence of the President of the Senate.

The VICE PRESIDENT. The question is on agreeing to the conference report.

The report was agreed to.

[From the Congressional Record, Dec. 20, 1973]

HOUSE AGREEMENT TO THE CONFERENCE REPORT

CONFERENCE REPORT ON S. 1981, ENDANGERED SPECIES ACT OF 1973

Mrs. SULLIVAN. Mr. Speaker, I call up the conference report on the Senate bill (S. 1983), to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentlewoman from Missouri?

There was no objection.

The Clerk read the statement.

(For conference report and statement of managers see page 426.)

Mrs. **Sullivan** (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The **Speaker**. Is there objection to the request of the gentlewoman from Missouri?

There was no objection.

Mrs. **Sullivan**. Mr. Speaker, the report of the conferees which is now before the House for approval deserves the support of every Member. The conferees have managed to produce a compromise bill, within the rules of both Houses which is in most respects an improvement over both bills. It represents a sensible and sound approach to a very serious problem: The protection of endangered and threatened species which without that protection, might disappear. I am persuaded that this is an important problem, and that the solution of this problem proposed by the conferees is fair, workable, and desirable.

Time is very much a consideration in this bill. We have adopted language which encourages the States to participate fully in endangered species programs. Within a certain period of time after passage of our bill, the States must have adopted adequate conservation programs in order to preserve their initiative in this area. Unless this bill is signed into law before the 1st of January, State and Federal timetables may be seriously and adversely affected.

Earlier this year, an international treaty was negotiated to establish a worldwide system of protection for these species. The Senate has approved the treaty, and I understand that there is no obstacle to formal ratification by this country. Approval of the conference report will set in motion the remaining steps that can and should be taken by this country to implement the treaty and to create a strong but fair regulatory system upon U.S. citizens.

Mr. Speaker, I urge approval of the conference report.

Mr. **Goodling**. Mr. Speaker, I wish to associate myself with the remarks of my distinguished coconferees, the gentlewoman from Missouri and chairman of the Committee on Merchant Marine and Fisheries, Mrs. Sullivan, and the chairman of our Fish and Wildlife Subcommittee, Mr. Dingell, in support of the action of the conference committee in resolving the differing versions of this important legislation.

One of the principal issues confronting the conference committee centered around the responsibilities to be vested in the Secretaries of Interior and Commerce as a result of Reorganization Plan No. 4 of 1970, which transferred to the Secretary of Commerce authority for the protection of endangered species which inhabit the oceans or whose environment is predominantly marine-oriented. The conference committee decided, I believe wisely, that there should be only one list of endangered species to be maintained by the Department of Interior. The ministerial duties associated with formal promulgation of these lists will be handled by the Secretary of the Interior, but so far as the listing of species under the authority of the Secretary of Commerce is concerned, the Secretary of the Interior will have no discretion but will merely carry out the mandate of the Secretary of Commerce. Procedurally, the Secretary of Commerce will be responsible for all steps necessary leading to the listing of a specie under his jurisdiction on either the threatened or endangered list. Once he has made that decision or decides to upgrade the listing of a specie from threatened to endangered status, he shall so inform the Secretary of the Interior who will immediately take the necessary steps to see that the listing is effectuated.

The conference committee determined that with respect to the downgrading of a listing from endangered to threatened status, or in the case of removal totally, the Secretary of the Interior should have the final authority with respect to all species, including those otherwise under the jurisdiction of the Secretary of Commerce. In such a case, the Secretary of Commerce will transmit his determination that a specie should be downgraded or removed by way of recommendation to the Secretary of the Interior, and if the Secretary of the Interior concurs in the recommendation he shall implement the action. The determination to downgrade or remove a specie under the authority of the Secretary of Commerce may only, however, be initiated by the Secretary of Commerce.

The vesting of this veto power over the downgrading or delisting of species under the authority of the Secretary of Commerce was a reasonable compromise between those who advocate no role whatsoever for the Commerce Department in the protection of endangered species and those who favored a fully separate role for each department in the management of the species under their respective jurisdictions. In practice, I am confident that this arrangement will work quite satisfactorily. We fully expect the Secretaries of Interior and Commerce to work together harmoniously so that the objectives of this legislation will be realized, and I can assure my colleagues that we will be watching their performance very closely.

The second principal issue which confronted the conference committee involved the role of the States in the protection of the endangered and threatened species of resident wildlife. While the House placed the fundamental responsibility for establishing and overseeing programs for the protection of endangered and threatened species in the Federal Government, the other body has substantially amended the legislation to shift the basic responsibility for endangered species programs to the States. The conference committee retained language giving the States an opportunity to participate in the protection of endangered and threatened species in cooperation with the Federal Government.

The conference committee bill provides a transition period of up to 15 months following enactment during which time the prohibitions of this act will be held in abeyance pending the adoption by States and approval by the Secretary of cooperative management agreements. Where cooperative agreements have been entered into, they will control. We are confident that the States will take advantage of this opportunity to avoid Federal preemption. It should be noted that during the transitional period, the Federal Government may step in to enforce the act when requested to do so by a State, or when the Secretary determines that an emergency exists requiring full application of the act to protect a species.

Finally, Mr. Speaker, I wish to stress that the success of this program will depend not only upon the cooperation between the Secretaries of Interior and Commerce and upon cooperation between the Federal Government and the States, but also upon funding by the Federal Government of its share of the cost of management programs and the willingness of the States to bear their share of these costs. We are all too prone to decry the centralization of authority in Washington to the detriment of States, and yet when it comes down to specific proposals which would preserve State initiative, there seems to be a reluctance to assume the even relative modest financial burden that is an essential ingredient in the exercise of authority. As in the case of the interrelationship between the Federal departments involved in this program, we will be closely watching the performance of the States, and we will be monitoring the budgetary process to see that this program is fully funded. Mr. Speaker, I urge the adoption of the conference report on the Endangered Species Act of 1973.

Mr. BERGLAND. Mr. Speaker, will the gentlewoman yield?

Mrs. SULLIVAN. Mr. Speaker, I yield to the gentleman from Minnesota.

Mr. BERGLAND. Mr. Speaker, I ask for this time only to ask the gentlewoman some questions on this report, particularly as it affects the species normally known as the eastern timber wolf, which is an animal that has inhabited my State of Minnesota for literally thousands of years. This animal has, in the last 8 years, according to our State management experts, enlarged its range to about 25,000 square miles of land in the northern part of Minnesota.

In some instances, I am told by management experts, the population has reached the saturation level in the main range, with wolves numbering as many as one per 10 square miles.

This timber wolf is a problem for livestock producers in that region of the State and has caused great concern among sportsmen who are concerned about the maintenance of the deer herd. The wolf is known to consume about 20 deer per year, and our State has struggled for years in developing management programs to enlarge the herd of white-tailed deer. The wolf is a problem.

Mr. Speaker, I have some questions of the gentlewoman, if she would be so kind. I read the committee report, and I notice a distinction between endangered species and threatened species. My question, if the Secretary of the Interior were to designate the eastern timber wolf as an endangered species could a State such as Minnesota have that species classified as a threatened species and, therefore, treat it differently?

Mrs. SULLIVAN. Mr. Speaker, may I say that we have had a lot of discussion about the timber wolf. I would like to yield to the distinguished gentleman from Michigan (Mr. Dingell) to answer that.

Mr. DINGELL. Mr. Speaker, the answer is that the determination of whether a species is threatened or endangered lies in the hands of the Secretary of the Interior in the case of land species, and in certain respects in the case of marine species. In certain other instances with regard to marine species, in the hands of the Secretary of Commerce. The State would not have any discretion to reclassify species designated by the Secretary of the Interior as endangered. The State would have an opportunity to come forward with an appropriate management program, in the form of a cooperative agreement with the Secretary.

It would have a period of 15 months or 120 days after the legislative session of the State Legislature had ceased in which to develop a program governing the taking of resident species.

Mr. **Bergland.** Mr. Speaker, if the gentlewoman will yield further, could the Secretary, under the terms of this conference report, designate the timber wolf as an endangered species in all States of the Union except Minnesota?

Mr. **Dingell.** Mr. Speaker, if the gentlewoman from Missouri will yield, the answer to that question is that it could so do, if the population of wolves in question were to be found in Minnesota. He responsibility and discretion would extend to particular species, subspecies or populations of wolves and other kinds of endangered or threatened animals.

Mr. **Bergland.** Mr. Speaker, this has to do with similarity of appearances cases. On page 6, the report refers to protection of species similar to those that appear on the endangered list or on the threatened list.

In my State we have a species, commonly known as a brush wolf; also known as a coyote. It takes an expert to distinguish between the two species of wolves. The coyote and the brush wolf are a threat to the livestock production and deer management project as in other regions of the United States.

Will the gentlewoman explain this provision for me please?

Mrs. **Sullivan.** Mr. Speaker, again I will refer the question to the gentleman from Michigan (Mr. Dingell) to answer.

Mr. **Dingell.** Mr. Speaker, I would like to disagree with my good friend, the gentleman from Minnesota, in that the coyote or the brush wolf can be distinguished from the gray wolf or the Eastern wolf. The answer is that hunters and experts in this matter can and do make the distinction.

The legislation provides that where there is a strong similarity of appearance between the species and where there is such a close resemblance in appearance that only under the most difficult circumstances or under the most expert study can the difference be ascertained, and if that confusion poses an additional threat to the endangered species, then the Secretary may require the protection of both the endangered species and the species which resembles it.

I do not happen to believe, on the basis of my own information and knowledge—and I am familiar with both the coyote and the wolf—that this provision would come into play with regard to the coyote and the wolf. There are very visible differences in the characteristics of the two species.

Mr. **Bergland.** Mr. Speaker, I, like my friend and colleague, the gentleman from Michigan, have hunted deer for the past 25 years, and there have been many instances when I caught a fleeting glimpse of an animal which I knew was some type of a wolf or coyote, and I was never been able to distinguish the difference.

I am wondering if the Secretary would designate the coyote or the brush wolf to be on the endangered or the protected list.

Mr. **Dingell.** Mr. Speaker, the answer for the gentleman's question is that the coyote is not foreseeably going to be put on the endangered species list or on the threatened species list under this legislation. It simply will not happen.

Mr. **Bergland.** How about what we call the brush wolf?

Mr. **Dingell.** That is the coyote. It is not likely to be put on the endangered species list, I can asure the gentleman of that. We have plenty of coyotes.

Mr. **Bergland.** Mr. Speaker, I am relieved to hear that. On page 14 of the committee report, under the general heading, "Exceptions," I notice it says in the bottom paragraph, as follows:

> The Secretary may make further requirements for a showing of undue economic hardships as he deems fit.

Mr. Speaker, will the gentlewoman or her designee, the gentleman from Michigan, please explain this to me?

Does this apply only to those exceptions that are provided for in the State of Alaska?

Mr. **Dingell.** No. If the gentlewoman will yield further, the provision to which the gentleman refers alludes to the species which are endangered internationally, in other words, in other countries and on the high seas, and also to domestic species.

As a general rule, however, the hardship exemption applies mostly to importation and commercial activities. Usually it relates to commercial activities. However, it is conceivable that under certain circumstances it could also apply to taking of domestic animals.

Mr. **Bergland.** Mr. Speaker, the Department of Conservation in my State of Minnesota has developed a plan, with the advice and counsel of representatives of the U.S. Forest Service and the representatives of the Bureau of Sports Fisheries and Wildlife within the Department of Interior. This is commonly known as the Tri-Agency Plan.

It provides for a sanctuary in the northeast corner of Minnesota, where 2,500 miles of territory are provided in which the wolf will be protected, and in other areas, for instance, areas adjoining the northeastern corner, it would provide for some management and under some circumstances it would authorize some harvesting if the wolf was doing damage to the deer herd or to livestock or to farms in that general region.

I would certainly hope that the Secretary would accept that "Tri-Agency" plan, once authorized by the Minnesota Legislature.

I notice that the conference committee has recognized the need to have State input in the management of these kinds of problems. Does the gentlewoman have any comments on that plan?

Mrs. **Sullivan.** Yes. I understand the Department of the Interior is one of those agencies, so there would have to be that cooperation.

Mr. **Bergland.** I thank the gentlewoman for yielding.

Now, I certainly hope the Secretary of the Interior will accept that plan. It is terribly important, I think, if we are to protect the species that are truly in danger of extinction and, on the other hand, find a way of managing the predators so they do not destroy other of our valuable wildlife resources.

Mrs. **Sullivan.** Mr. Speaker. I yield such time as he may consume to the gentleman from Michigan (Mr. Dingell).

Mr. **Dingell.** Mr. Speaker, I urge approval of the conference report on this measure. Our committee has held many days of hearings on this matter, and has considered it extensively in open executive session. The bill is strongly supported by the conservation community, by wildlife groups and hunters, and by the administration. It would be no exaggeration to say that scarcely a voice has been heard in dissent. The report of the conference committee represents a substantial effort, and a successful effort, to blend the best features of both bills and deserves the support of the House.

The major issue before the conference was probably the assignment of responsibilities between the Interior Department, which is currently responsible for the endangered species program, and the Commerce Department, which has responsibility for certain species under the Reorganization Plan No. 4 of 1970. The issue was settled by assigning to Interior the overall responsibility for maintaining the lists of endangered and threatened species, and by requiring that each agency have primary jurisdiction for determining the status of species within their areas of responsibility. An exception to this rule was provided in the case of species assigned to the Department of Commerce, which is permitted to propose that species be added to the list, or upgraded from threatened to endangered status in which case Interior must so amend the list. In order for such a species to be removed or downgraded, however, it will be necessary for both agencies to agree.

A case in point, outlining this division of responsibility, might be the status of whales. If Commerce were to propose that another species than those now listed should be included, such as the minke whale, it could make the determination on the basis of the record, after complying with the procedural requirements of the act, and then inform Interior of that determination. Interior would have to comply, as promptly as possible.

If, on the other hand, Commerce were to propose that a whale now on the list, such as the humpback whale, should be taken off, or downgraded in status, it would go through the same procedural steps and then so recommend to Interior; in this case, however, Interior could either agree or disagree. In the latter case, the disagreement would create an impasse, and no action would be taken with respect to the species unless one agency receded.

The effect of this resolution of differences will be to make it somewhat easier to list species than it will be to take them off. We assume that in clear cases, there will be little or no disagreement; that any disagreement will take place, if at all, only in the close or difficult cases. In this situation, it seems appropriate that we should act cautiously—certainly the conservative thing to do would be to withhold action until the picture becomes clearer.

I am convinced that this will result in better decisions by both agencies.

Also added to the bill as it passed the House is a provision allowing Alaskan Natives a qualified exemption from the requirements of the act, in order to allow them to hunt for subsistence purposes. While I expect that their dependence upon these species will diminish with the passage of time, I also recognize that there may be particular problems at the moment which would make it inequitable to halt all taking at once. We have provided adequate flexibility in the act, however, to allow the Secretary or the State fish and game agency to step in and impose additional restrictions upon native taking, and I am satisfied that these powers are ample to protect the further endangement of any species which might otherwise be subject to unrestricted native taking in Alaska.

In recent oversight hearings on the Marine Mammal Protection Act, representatives of the State of Alaska testified that they found similar provisions in that act to be offensive and perhaps even violative of the Alaska constitution, which forbids discrimination among classes of Alaska citizens. If they continue to feel so with respect to endangered or threatened species, the bill allows that State to establish further restrictions upon native taking, as a part of or independent from a comprehensive endangered species conservation program. State laws may not be more lenient than the Federal law, but they can be more strict. Also, the bill specifically indicates that if there were to be any conflict between the requirements of this act and those of the Marine Mammal Protection Act, the stricter of the two will prevail.

Another important step which we have taken in this bill—and in this regard the two bills are virtually identical—is that we have substantially amplified the obligation of both agencies, and other agencies of Government as well; to take steps within their power to carry out the purposes of this act. A recent article in the Washington Post, dated December 14, illustrates the problem which might occur absent this new language in the bill. It appears that the whooping cranes of this country, perhaps the best known of our endangered species, are being threatened by Air Force bombing activities along the gulf coast of Texas. Under existing law, the Secretary of Defense has some discretion as to whether or not he will take the necessary action to see that this threat disappears—I hasten to say that I believe that Secretary Schlesinger, who I know to be a decent and honorable man, will take the proper steps whether or not the law is amended, but the point that I wish to make is that once the bill is enacted, he or any subsequent Secretary of Defense would be required to take the proper steps.

Another example has recently crossed my desk, having to do with the continental population of grizzly bears which may or may not be endangered, but which is surely threatened. An article by Michael Frome on this subject is printed in the current edition of Field and Stream. It points out certain steps that should be, but are not being, taken to see that these magnificent animals do not go the way of the passenger pigeon. Once this bill is enacted, the appropriate Secretary, whether of Interior, Agriculture or whatever, will have to take action to see that this situation is not permitted to worsen, and that these bears are not driven to extinction. The purposes of the bill include the conservation of the species and of the ecosystems upon which they depend, and every agency of Government is committed to see that those purposes are carried out. It is a pity that we must wait until a species is faced with extermination before we begin to do those things that we should have done much earlier, but at least when and if that unfortunate stage is reached, the agencies of Government can no longer plead that they can do nothing about it. They can, and they must. The law is clear.

Another important step taken in this act is the requirement that the decisionmaking process be opened up to public review and participation. On the whole, I believe that these programs have been reasonably open in the past, but I also believe that agency performance can be improved. Under the provisions of this legislation, the public will be specifically allowed to propose the listing or delisting of species, or to petition the Secretary to step in and declare an emergency requiring immediate Federal action in order to protect an endangered or threatened species. Hardship exemptions are permitted, under stringent controls, and here again the process will be opened up to public review. These requirements will do much to increase the confidence of the public in the working of their Government—a confidence which today is somewhat shaken with respect to many programs and officials.

The enforcement provisions of this legislation are extensive. It forbids taking and importing or exporting of endangered species as well as a number of other activities. The conference committee was concerned with the position of an innocent common carrier or other bailee who might be in possession of unmarked or mismarked packages containing endangered species or parts or products from such species and we developed language which we believe adequate to cover this situation.

With respect to the civil penalties which may be assessed under section 11(a), the Government must show, in order to validly assess a penalty of over $1,000, that the person charged with violating the act knew the essential facts of the violation. It is not necessary for the Government to show that the person charged knew that he was in violation at the time the offense was committed.

If a common carrier is told by a shipper that the goods contained in the shipment are something other than animal parts or products, and has no reason to believe otherwise, the carrier cannot be assessed a penalty under this section. If it is told that the goods are animal skins, then he has an obligation to make a reasonable inquiry to satisfy himself that the skins are not from endangered species; if he does so, he is once again shielded. If, on the other hand, he knows or in the circumstances can reasonably be expected to know that these are forbidden goods, then penalties may be assessed against him.

Similarly, the term "knowingly violates," as used in this section, is intended to refer to a conscious act or a conscious omission of the offender which amounts to a violation. It does not require that the offender know that the act which he consciously commits or omits constitutes a violation.

This question has been discussed with the Senate and it is my clear understanding that they are in entire agreement with this interpretation of the language of the bill.

Mr. Speaker, this legislation was considered at length by the House earlier this year. At that time it was overwhelmingly approved by a vote of 390 to 12, in substantially the same form. I ask that the House once again declare its support for this important legislation, and approve the conference report.

Mrs. SULLIVAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana (Mr. Breaux).

Mr. Breaux. I thank the distinguished chairman of my committee for yielding to me.

I would like to ask a question of the chairman or the distinguished chairman of the Subcommittee on Fish and Wildlife.

It is my impression under the presently existing law provisions that exist only allow the Department of the Interior to list species of one category that is the endangered species. This legislation allows the Department of the Interior, through the Secretary, to set up a second category of species that are a threatened species. Am I correct in that understanding?

Mrs. Sullivan. That is correct.

Mr. Breaux. Is this a provision that will affect the international treaty presently being considered and allowed us to have the species removed from the endangered category if it is shown to be necessary to place it in the second category?

Mrs. Sullivan. Our understanding is it implements the international convention.

Mr. Breaux. I thank the gentlewoman.

Mrs. Sullivan. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The Speaker. The question is on the conference report.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. Bell. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The Speaker. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 355, nays 4, not voting 73, as follows:

[Roll No. 714]

YEAS—355

Abdnor
Abzug
Adams
Addabbo
Anderson, Calif.
Andrews, N.C.
Annunzio
Archer
Armstrong
Ashbrook
Ashley
Badillo
Bafalis
Baker
Barrett
Bauman
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blackburn
Blatnik
Boggs
Boland
Bowen
Brademas
Brasco
Bray
Breaux
Breckinridge
Brinkley
Broomfield
Brotzman
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Buchanan
Burgener
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Butler
Byron
Carey, N.Y.
Carney, Ohio

YEAS—Continued

Carter
Casey, Tex.
Cederberg
Chamberlain
Chappell
Chisholm
Clark
Clausen, Don H.
Clawson, Del.
Clay
Cleveland
Cochran
Cohen
Conable
Conlan
Conte
Corman
Cotter
Coughlin
Crane
Cronin
Culver
Daniel, Dan
Daniel, Robert W., Jr.
Daniels, Dominick V.
Davis, Ga.
Davis, S.C.
Davis, Wis.
de la Garza
Dellenback
Dellums
Denholm
Dennis
Derwinski
Devine
Dickinson
Diggs
Donohue
Dorn
Downing
Drinan
Duncan
du Pont
Eckhardt
Edwards, Ala.
Edwards, Calif.
Eilberg
Erlenborn
Esch
Eshleman
Evans, Colo.
Fascell
Findley
Fish
Fisher
Flood
Flowers
Flynt
Foley
Ford, William D.
Forsythe
Fountain
Fraser
Frenzel
Frey
Fuqua
Gaydos
Gettys
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Grasso
Green, Oreg.
Green, Pa.
Gude
Gunter
Guyer
Haley
Hamilton
Hammerschmidt
Hanley
Hanrahan
Hansen, Idaho
Harsha
Hastings
Hawkins
Hechler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Hogan
Holifield
Holt
Holtzman
Horton
Hosmer
Howard
Huber
Hudnut
Hungate
Hunt
Hutchinson
Ichord
Johnson, Calif.
Johnson, Colo.
Johnson, Pa.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Karth
Kastenmeier
Kazen
Kemp
Ketchum
King
Kluczynski
Koch
Kuykendall
Kyros
Latta
Lent
Litton
Long, La.
Long, Md.
Lott
Lujan
McClory
McCloskey
McCollister
McCormack
McDade
McEwen
McFall
McKay
McKinney
McSpadden
Macdonald
Madden
Madigan
Mahon
Mallary
Mann
Maraziti
Martin, N.C.
Mathias, Calif.
Mathis, Ga.
Matsunaga
Mayne
Mazzoli
Meeds
Melcher
Mezvinsky
Milford
Miller
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Mizell
Moakley
Mollohan
Montgomery
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Myers
Natcher
Nedzi
Nelsen
Nix
Obey
O'Brien
O'Hara
O'Neill
Owens
Parris
Passman
Patman
Patten
Perkins
Pettis
Peyser

YEAS—Continued

Pickle
Pike
Poage
Powell, Ohio
Preyer
Price, Ill.
Pritchard
Quie
Railsback
Randall
Rangel
Rees
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson, Va.
Robison, N.Y.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rose
Rosenthal
Rostenkowski
Roush
Rousselot
Roy
Roybal
Runnels
Ruppe
Ruth
St Germain
Sandman
Sarasin
Sarbanes
Schroeder
Sebelius
Seiberling
Shoup
Shuster
Sikes
Skubitz
Slack
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, J. William
Stanton, James V.
Stark
Steed
Steele
Steelman
Steiger, Wis.
Stokes
Stratton
Stuckey
Studds
Sullivan
Symington
Symms
Talcott
Taylor, N.C.
Teague, Calif.
Teague, Tex.
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Tiernan
Towell, Nev.
Treen
Udall
Vander Jagt
Vanik
Waggonner
Waldie
Wampler
Ware
Whalen
White
Whitehurst
Whitten
Widnall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Wilson, Charles, Tex.
Winn
Wolff
Wyatt
Wydler
Wylie
Wyman
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Ga.
Young, Ill.
Young, S.C.
Young, Tex.
Zablocki
Zion

NAYS—4

Beard
Gross
Landgrebe
Price, Tex.

NOT VOTING—73

Alexander
Anderson, Ill.
Andrews, N. Dak.
Arends
Aspin
Bolling
Brooks
Burke, Calif.
Burton
Camp
Clancy
Collier
Collins, Ill.
Collins, Tex.
Conyers
Danielson
Delaney
Dent
Dingell
Dulski
Evins, Tenn.
Frelinghuysen
Froehlich
Fulton
Gray
Griffiths
Grover
Gubser
Hanna
Hansen, Wash.
Harrington
Harvey
Hays
Hébert
Jarman
Keating
Landrum
Leggett
Lehman
Mailliard
Martin, Nebr.
Metcalfe
Michel
Mills, Ark.
Minshall, Ohio
Moss
Nichols
Pepper
Podell
Quillen
Rarick
Reid
Riegle
Rooney, N.Y.
Ryan
Satterfield
Scherle
Schneebeli
Shipley
Shriver
Sisk
Smith, Iowa
Steiger, Ariz.
Stephens
Stubblefield
Taylor, Mo.
Ullman
Van Deerlin
Veysey
Vigorito
Walsh
Wright
Zwach

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Rooney of New York with Mr. Arends.
Mr. Hébert with Mr. Aspin.
Mr. Dent with Mr. Taylor of Missouri.
Mr. Podell with Mr. Landrum.
Mr. Nichols with Mr. Steiger of Arizona.
Mr. Hays with Mr. Shriver.
Mr. Stubblefield with Mr. Martin of Nebraska.
Mr. Harrington with Mr. Mailliard.
Mrs. Hansen of Washington with Mr. Froehlich.
Mr. Hanna with Mr. Conyers.
Mr. Burton with Mr. Minshall of Ohio.
Mr. Metcalfe with Mr. Riegle.
Mrs. Burke of California with Mr. Michel.
Mr. Sisk with Mr. Anderson of Illinois.
Mr. Shipley with Mr. Frelinghuysen.
Mr. Lehman with Mr. Danielson.
Mr. Brooks with Mr. Andrews of North Dakota.
Mr. Fulton with Mr. Gubser.
Mr. Rarick with Mr. Camp.
Mr. Alexander with Mr. Grover.
Mr. Stephens with Mr. Collins of Texas.
Mrs. Collins of Illinois with Mr. Jarman.
Mr. Delaney with Mr. Clancy.
Mr. Reid with Mr. Zwach.
Mrs. Griffiths with Mr. Quillen.
Mr. Moss with Mr. Collier.
Mr. Dulski with Mr. Harvey.
Mr. Evins of Tennessee with Mr. Scherle.
Mr. Dingell with Mr. Schneebeli.
Mr. Gray with Mr. Walsh.
Mr. Leggett with Mr. Mills of Arkansas.
Mr. Pepper with Mr. Ryan.
Mr. Satterfield with Mr. Smith of Iowa.
Mr. Van Deerlin with Mr. Ullman.
Mr. Vigorito with Mr. Wright.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

[From the Congressional Record, Dec. 21, 1973]

PRESENTED TO THE PRESIDENT FOR SIGNATURE

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, December 21, 1973, he presented to the President of the United States the following enrolled bills and joint resolutions:

* * * * * * *

S. 1983. An act to provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

* * * * * * *

PRESIDENTIAL STATEMENT ON SIGNING S. 1983 INTO LAW

ENDANGERED SPECIES ACT OF 1973

STATEMENT BY THE PRESIDENT UPON SIGNING THE BILL INTO LAW, DECEMBER 28, 1973

I have today signed S. 1983, the Endangered Species Act of 1973. At a time when Americans are more concerned than ever with conserving our natural resources, this legislation provides the Federal Government with needed authority to protect an irreplaceable part of our national heritage—threatened wildlife.

This important measure grants the Government both the authority to make early identification of endangered species and the means to act quickly and thoroughly to save them from extinction. It also puts into effect the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed in Washington on March 3, 1973.

Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed. It is a many-faceted treasure, of value to scholars, scientists, and nature lovers alike, and it forms a vital part of the heritage we all share as Americans. I congratulate the 93d Congress for taking this important step toward protecting a heritage which we hold in trust to countless future generations of our fellow citizens. Their lives will be richer, and America will be more beautiful in the years ahead, thanks to the measure that I have the pleasure of signing into law today.

NOTE: The Statement was released at San Clemente, Calif.

As enacted, the bill (S. 1983) is Public Law 93-205, approved December 28, 1973.

ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Endangered Species. Hearings, 93d Congress, 1st session. Mar. 15, 26, 27, 1973. Washington, U.S. Govt. Print. Off., 1973. 388 p. "Serial no. 93-5"

Hearings on the following legislation to protect endangered species of fish and wildlife:

H.R. 37 and seven identical bills, H.R. 1461 and identical H.R. 4755, H.R. 2735, and the Administration bill H.R. 4758, all titled the Endangered Species Conservation Act of 1973, to provide for the conservation, protection, and propagation of species of subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinct-on.

H.R. 2169, the Nature Protection Act, to implement the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

March 15, 1973 hearing receives and discusses report of the U.S. representatives to the Plenipotentiary Conference to Conclude an International Convention on Trade in Certain Species of Wildlife, signed March 3, 1973.

March 26, 1973 hearing includes submitted statements and testimony by: N. P. Reed (NDS), H. Pollock (NOAA), R. M. Housely (Nat'l Forest System), A. G. Gazlay (Mich. D.N.R.), C. E. Wilson (Nat'l Audubon Soc.), C. Stevens (Soc. for Protective Legislation), H. S. Irwin (N.Y. Botanical Gardens).

March 27, 1973 hearing includes statements and testimony from: Reps. F. Annunzio (Ill.), H. Helstoski (NJ), C. W. Young (Fla.), R. A. Roe (NJ), G. W. Whitehurst (VA), L. Coughlin (Penn.), B. B. Blackburn (GA); J. Grandy (Natl Parks and Conservation

Assoc.), L. S. Clapper (Natl Wildlife Federation), T. Garrett (Friends of the Earth), S. R. Seater (Defenders of Wildlife), M. Casey (Minn. D.N.R.), R. C. Hughes (Sierra Club), J. P. Corcoran (Asst. Att. Gen., NY).

Additional submitted statements and correspondence are included.

U.S. Congress. Senate. Committee on Commerce. Subcommittee on Environment. Endangered Species Act of 1973. Hearings, 93d Congress, 1st session, June 18 and 21, 1973. Washington, U.S. Gov. Print. Off., 1973. 153 p. "Serial No. 93-67"

Hearings on S. 1592. the Administration proposal, and S. 1983, both titled the Endangered Species Conservation Act of 1973, to provide for the conservation, protection, and propagation of endangered species. Also explores the relationship between proposed legislation and the Marine Mammal Protection Act of 1972. Includes additional correspondence and statement.

Hearing of June 18, 1973 includes testimony by: E. U. C. Bohlen (FWS), R. W. Schoning (NMFS), T. R. Garrett (Friends of the Earth), J. S. Gottschalk (International Association of Game, Fish, and Conservation Commissioners), J. W. Grandy (National Parks and Conservation Association), L. R. Jahn (Wildlife Management Institute).

Hearings of June 21, 1973 includes testimony by: H. A. Williams (Senator of New Jersey), B. Fensterwald (Committee for Humane Legislation), L. G. Regenstein (Fund for Animals), M. E. Rich (National Rifle Association), S. R. Seater (Defenders of Wildlife), C. E. Wilson (Audubon Society), H. D. Tiffany (Alaska Native Arts and Crafts Coop), J. R. Sharp (American Fur Merchants Association and Fur Conservation Institution of America), R. C. Hughes (Sierra Club).

PART II

LEGISLATIVE HISTORY OF 1976 AMENDMENTS TO THE ENDANGERED SPECIES ACT

ENDANGERED SPECIES ACT APPROPRIATION AUTHORIZATION EXTENSION, PUBLIC LAW 94–325

BACKGROUND

The following quoted material is taken from a review of fisheries and wildlife conservation legislation of the 94th Congress written by CRS and issued as a committee print by the Senate Committee on Interior and Insular Affairs (See: Congress and the Nation's Environment: Energy and Natural Resources Actions of the 94th Congress. January 1977. Committee Print. Senate Committee on Interior and Insular Affairs. Washington, U.S. Gov. Print. Off., pp. 112–1126):

> The purpose of this legislation [was] to extend the authorization for appropriations to the Department of Commerce and the Interior to carry out provisions of the Endangered Species Act of 1973. The Endangered Species Act of 1973 gave primary responsibility for the legislation's administration to the Department of Commerce and the Interior. General authorization for appropriations under the Act for the Departments to carry out functions and responsibilities, other than certain financial assistance to the States under Section 6, is provided for by Section 15 of the Act. The authorization for appropriations under Section 15 expired on June 30, 1976. Accordingly, the Secretaries of Commerce and Interior in June and May 1975, respectively, submitted proposed legislation to extend the authorizations for appropriations. H.R. 8092 was introduced by Mrs. Sullivan as a bill incorporating the requests of the two Secretaries. A hearing was held on the bill by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on February 6, 1976 (Serial 94–30).
>
> Testimony given at three days of oversight hearings conducted by the House Subcommittee on the administration of the endangered species program (Serial 94–17) as well as that presented at the February 6, 1976 legislative hearing, bore stark evidence of serious limits on progress of identifying, classifying, and listing of endangered species of plants and animals and of designating critical habitats of endangered species. The chief limits to greater progress in meeting the obligations imposed by the Endangered Species Act of

1973 [the witnesses indicated, were] inadequate staff and inadequate budgets in both the Commerce and Interior Departments' endangered species offices.

The Department of the Interior proposed an authorization-appropriation of $10,000,000 for each of Fiscal Years 77 and 78, and the Department of Commerce proposed an authorization-appropriation of $2,000,000 for each of those fiscal years, as well as $500,000 for the transition period, July 1–September 30, 1976. Interior testified no extra transition period funds were required since it received authorization to continue all Fish and Wildlife Service programs during the transition period under its 1976 Appropriations Act (P.L. 94–165). Testimony elicited from representatives of both Departments during the Oversight and Legislative Hearings, as well as testimony submitted by interested non-government organizations, indicated that further increased authorizations would be extremely desirable and most definitely consistent with the programs' actual needs. Accordingly, H.R. 8092 was amended by the Committee to delete the transition period funding for the Department of the Interior, originally in the bill as drafted, to increase Interior's authorization for the two fiscal years by $5,000,000 for a total of $25,000,000, and to increase Commerce's authorization by $1,000,000 for a total for the 1977 and 1978 fiscal years of $5,000,000. The bill, as amended by the Committee, was brought before the House on the 15th of March and passed without debate.

In the Senate two bills were introduced reflecting the needs of the two departments for extended appropriations authorization for endangered species program work: S. 2334 for the Department of Commerce and S. 3122 for the Department of the Interior. The Senate Committee on Commerce's Subcommittee on the Environment held a day of hearings on this legislation, and on the House-passed bill (H.R. 8092 which combined provisions of the other two), on May 6, 1976 (Serial 94–82). On May 11, the full Committee in executive session approved a substitute text for S. 3122 in order to combine reauthorizations for the administration of the Act by both Departments. This bill also increased endangered species program funding authorizations for the Departments of Commerce and the Interior by the same amounts as did the House-passed bill, except the Senate bill kept in language authorizing $1.8 million for Interior for the transition period. The bill, as reported by the Committee, was then passed without debate by the Senate on May 18, 1976.

On June 17, 1976 the House then passed S. 3122 in lieu of its own previously passed bill, H.R. 8092. Mr. Leggett, Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, noted on the floor in urging his colleagues' acceptance of the Senate version that Senate retention of the authorization for transition funding for Interior's endangered species program funding was merely duplicative of existing authority. He said it was thus not worth insisting that the Senate pass the earlier-passed House bill (as was the customary legislative practice) by substitution of S. 3122 language which would then require new House consideration of such a Senate amendment.

The bill was approved by the President on June 30, 1976 becoming Public Law 94–325.

CHRONOLOGY—PUBLIC LAW 93–325

June 20, 1975—H.R. 8092 introduced, referred to House Committee on Merchant Marine and Fisheries

Mar. 10, 1976—S. 3122 introduced, referred to Senate Committee on Commerce

Mar. 11, 1976—H.R. 8092 reported to House by the Committee on Merchant Marine and Fisheries, with amendment, H. Rept. 94–887

Mar. 15, 1976—H.R. 8092 passed House, amended

Mar. 16, 1976—H.R. 8092 referred to Senate Committee on Commerce

May 13, 1976—S. 3122 reported to Senate by the Committee on Commerce, with amendment, S. Rept. 94–837

May 18, 1976—S. 3122 passed Senate, amended

June 17, 1976—S. 3122 passed House (in lieu of previously passed H.R. 8092)

June 21, 1976—S. 3122 presented to President

June 30, 1976—S. 3122 signed into law (P.L. 94–325)

Public Law 94-325
94th Congress, S. 3122
June 30, 1976

An Act

To extend the authorization for appropriations to carry out the Endangered Species Act of 1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

Endangered Species Act of 1973. Appropriation authorization, extension.

(1) by striking out "(A) not to exceed $4,000,000" and all that follows through "$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof "(1) not to exceed $10,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,"; and

(2) by striking out "(B) not to exceed $2,000,000" and all that follows through "$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed $2,000,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,".

Approved June 30, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-887 accompanying H.R. 8092 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 94-837 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 122 (1976):
Mar. 15, H.R. 8092 considered and passed House.
May 18, considered and passed Senate.
June 17, considered and passed House, in lieu of H.R. 8092.

94th CONGRESS
1st Session

H. R. 8092

IN THE HOUSE OF REPRESENTATIVES

June 20, 1975

Mrs. Sullivan (for herself, Mr. Leggett, Mr. Forsythe, Mr. Dingell, Mr. Anderson of California, Mr. Pritchard, Mr. de la Garza, Mr. Studds, Mr. Lent, Mr. Patterson of California, and Mr. Emery) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To extend the authorization for appropriations to carry out the Endangered Species Act of 1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "and not to exceed $10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof ", not to exceed $10,000,000 for fiscal year 1976, not to exceed $2,500,000 for the period beginning July 1, 1976, and ending September

30, 1976, and not to exceed $10,000,000 for each of fiscal years 1977 and 1978,"; and

(2) by striking out "and not to exceed $2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof ", not to exceed $2,000,000 for fiscal year 1976, not to exceed $500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed $2,000,000 for each of fiscal years 1977 and 1978,".

94th Congress
2d Session
HOUSE OF REPRESENTATIVES
Report
No. 94-887

ENDANGERED SPECIES ACT AUTHORIZATION

March 11, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. Sullivan, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 8092]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 8092) to extend the authorization for appropriations to carry out the Endangered Species Act of 1973, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "and not to exceed $10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof ", not to exceed $10,000,000 for fiscal year 1976, and not to exceed the total of $25,000,000 for fiscal years 1977 and 1978,"; and

(2) by striking out "and not to exceed $2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof ", not to exceed $2,000,000 for fiscal year 1976, not to exceed $500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed the total of $5,000,000 for fiscal years 1977 and 1978,".

Purpose of the Legislation

The purpose of the legislation is to extend the authorization for appropriations to the Departments of Interior and Commerce to carry out the provisions of the Endangered Species Act of 1973.

Legislative Background

The Endangered Species Act of 1973 (16 U.S.C. 1531-1543) was passed in December 1973. Primary responsibility for this legislation was placed with the Departments of Commerce and the Interior. General authorization of appropriations under the act for the Departments to carry out functions and responsibilities, other than certain financial assistance to the States, is provided for by section 15 of the act. The authorization for appropriations under section 15 expires on June 30, 1976. Under this section, the act authorized an amount not to exceed $4 million for fiscal year 1974, $8 million for fiscal year 1975 and $10 million for fiscal year 1976 to enable the Department of the Interior to carry out functions and responsibilities of the act and authorized to the Department of Commerce $2 million for fiscal year 1974, $1.5 million for fiscal year 1975 and $2 million for fiscal year 1976.

Further, under section 6 which expires on June 30, 1977, the Endangered Species Act provides for grant-in-aid to States not to exceed $10 million for the first three years after date of enactment.

Accordingly, the Secretary of the Interior transmitted to Congress on May 19, 1975, proposed legislation to extend the authorizations for appropriations and on June 2, 1975, the Secretary of Commerce transmitted the same. On June 20, 1975, Mrs. Sullivan introduced legislation incorporating the two proposed extensions in the form of H.R. 8092. A hearing was held on February 6, 1976, to consider the bill.

Background and Need for Legislation

Man's activities threaten a growing number of species of plants and animals with extinction. Environmental change is taking place so rapidly that further delay in protection of endangered species and their habitats pushes certain species inevitably closer to the brink of extinction, making recovery more difficult and costly.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior and the Secretary of Commerce to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is the intent of the program to prevent other species from becoming endangered.

For fiscal year 1977, the President has requested the sum of $9,198,000 for the Department of Interior and $541,000 for the Department of Commerce under section 15 (A) and (B), respectively, to carry out the program.

In October, 1975, the Subcommittee on Fisheries and Wildlife Conservation and the Environment held three days of oversight hearings on the administration of the endangered species program. The Departmental presentations point out that the program sorely needs an infusion of additional funds in order to assure the responsible and effective management of this important Act.

Of particular importance is the listing of species as endangered or threatened and the designation of habitat critical to the survival of those species. Once an animal or plant is listed as endangered or threatened, the Act prohibits the taking, importing, exporting or interstate transport of the species and its parts or products. These protections against commercial exploitation have been instrumental in insuring the continued survival of dozens of endangered and threatened fauna. Unfortunately, the listing process has been severely restricted by the agencies' lack of resources.

At the present time the Department of Interior, for example, has only eight professional staff working parttime on the classification of species. The result is that 1) no plants have yet been listed as endangered or threatened, although the Smithsonian Institution recommended the listing of some 3,300 species of flora in December 1974; 2) approximately 200 species listed as endangered or threatened, pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora to which the United States is a signatory, have not been placed on the U.S. list; and 3) the Departments have information concerning several thousand additional species which may require protective listing, but which the Departments have not yet started to investigate.

Considering the importance of the Endangered Species Act and the volume of classification work which remains undone, a modest increase in the authorization provided the Departments of Commerce and Interior is, in the Committee's opinion, justified. It is anticipated that these funds will be utilized for the hiring of additional staff and for the completion of appropriate scientific studies.

The problems surrounding the designation of critical habitat pursuant to the Act are much the same as those surrounding the listing of species. It is the Committee's view that classifying a species as endangered or threatened is only the first step in insuring its survival. Of equal or more importance is the determination of the habitat necessary for that species' continued existence. Once a habitat is so designated, the Act requires that proposed Federal actions not adversely affect the habitat. If the protection of endangered and threatened species depends in large measure on the preservation of the species' habitat, then the ultimate effectiveness of the Endangered Species Act will depend on the designation of critical habitats.

Unfortunately, to date, no critical habitats have been designated under the Act. The Departments of Commerce and Interior have indicated the desire to study 108 high-priority designations and are currently working on nine. A primary reason for the Departments' poor record has been budgetary and staff limitations. In the case of the Department of Interior, the same 8 staff who are responsible for the classification of species are also charged with the responsibility for designating critical habitat. Neither Department, however, has sufficient financial resources to conduct the scientific studies and surveys which are prerequisite to determining a species' critical habitat.

Lack of funding also limited the Departments' ability to implement Section 8 and Section 9(d) of the Act. Section 8 establishes a program of assistance for foreign nations interested in developing programs designed for the protection of endangered species. Funds for implementing this program are derived from excess foreign currencies held by the United States and not from funds apropriated under the Endangered Species Act. In Fiscal Year 1977, it appears that approximately $600,000 in excess foreign currencies will be available for distribution to certain nations. To administer this program certain funds have ben provided under H.R. 8092.

Similarly, Section 9(d) of the Act, which establishes as an enforcement tool a registration program for importers and exporters of wildlife, has yet to be implemented. With the additional funding authorized under H.R. 8092, the Departments could begin to implement a registration program.

The Committee also perceived a need to authorize additional funds under the Endangered Species Act for the implementation of the International Convention which will enter into force during Fiscal Year 1977 or Fiscal Year 1978. The Convention charges each member nation with the responsibility for regulating the importation and exportation of flora and fauna listed as endangered or threatened pursuant to the Convention. The Convention also requires each member nation to establish a special scientific authority. The purpose of this authority is to advise the member nation on the merits of any application for the taking, or the importation or exportation of any listed species. When the Convention enters into force, the Departments of Commerce and Interior will incur certain expenses as a result of the establishment and operation of the scientific authority and will incur additional and significant enforcement responsibilities necessitating the expansion of the present enforcement program.

During the Committee's oversight hearings on the implementation of the Endangered Species and the hearings on H.R. 8092, it became clear that to fund the Endangered Species Act at the optimal level would require the expenditure of approximately $20 million in each of Fiscal Years 1977 and 1978. However, the Committee recognizes the finite limit on available resources and therefore supported only a relatively modest increase in the existing authorization. The funding authorized pursuant to H.R. 8092 represents the minimum amount necessary for the Departments of Interior and Commerce to fulfill their responsibilities under the Act.

THE AMENDMENT

The Department of Interior proposed an authorization-appropriation of $10,000,000 for FY 1977 and for 1978, while the Department of Commerce proposed an authorization-appropriation of $2,000,000 for each of fiscal years 1977 and 1978, and $500,000 for the transition period beginning July 1, 1976 and ending September 30, 1976. The Interior Department testified at the hearing that the transition period funding was not necessary for its Department since the Department received authorizations to continue all Fish and Wildlife Service programs during this transition period under their 1976 Appropriations Act, P.L. 94–165. Moreover, both Departments indicated during the hearings that increased authorizations would be highly desirable and consistent with their actual needs. Therefore, the Committee amended H.R. 8092 accordingly to delete the transition period funding for the Department of Interior, and increased the Department of Interior's authorization by $5,000,000, making a total of $25,000,000 for the next two fiscal years, and the Department of Commerce's authorization by $1,000,000, making a total of $5,000,000 for the next two fiscal years.

COST OF THE LEGISLATION

Pursuant to clause 7 of rule XIII, of the Rules of the House of Representatives, the Committee estimates the total cost of the legislation to be $500,000 for the transition period from July 1, 1976, to September 30, 1976, and $30 million for fiscal years 1977 and 1978. The Committee concluded that these costs are reasonable and consistent with the estimates made by the respective Departments.

COMPLIANCE WITH HOUSE RULE XI

(1) With respect to the requirements of Clause 2(1) (3) (A) of Rule XI, of the Rules of the House of Representatives, three days of oversight hearings were held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on October 1, 2, and 6, 1975 on the general subject matter of the Endangered Species Act of 1973. However, the Committee has not made any formal findings or recommendations at this time pursuant to those hearings.

(2) With respect to the requirements of clauses 2(l) (3) (B) and (C), of Rule XI of the Rules, the bill does not provide new budget authority or increased tax expenditures, and it has received no estimate and comparison prepared by the Director of the Congressional Budget Office. Consequently, no such information is supplied to meet these requirements.

(3) With respect to the requirements of clause 2(l) (3) (D), of Rule XI of the Rules, the Committee has received no report from the Committee on Government Operations on this subject.

(4) The Committee reports that enactment of H.R. 8092, as amended, would have no inflationary impact on prices and costs in the operation of the national economy.

DEPARTMENTAL REPORTS

H.R. 8092 was the subject of Executive Communication No. 1077 from the Department of the Interior and Executive Communication No. 1142 from the Department of Commerce. In addition, a report on the legislation was received from the Department of Interior. The material mentioned above follows herewith:

[Exec. Comm. No. 1142]

THE SECRETARY OF COMMERCE,
Washington, D.C.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed are six copies of a draft bill to amend section 15(B) of the Endangered Species Act of 1973 to extend the appropriation authorization, together with a statement of purpose and need in support thereof.

This proposed legislation has been reviewed by the Department in the light of Executive Order No. 11821 and has been determined not to be a major proposal requiring evaluation and certification as to its inflationary impact.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our draft bill to the Congress.

Sincerely,

ROGERS C. B. MORTON,
Secretary of Commerce

Enclosures.

A BILL To amend section 15(B) of the Endangered Species Act of 1973 to extend the appropriation authorization

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531, et seq.), is amended by striking in section 15(B) the words "fiscal year 1976," and inserting in lieu thereof the words "each of the fiscal years 1976 through 1978,".

STATEMENT OF PURPOSE AND NEED

The Endangered Species Act of 1973 (16 U.S.C. 1531–1543) was passed in December 1973. Primary responsibility for this legislation was placed with the Departments of Commerce and the Interior. General authorization of appropriations under the Act for the Departments to carry out functions and responsibilities, other than certain financial assistance to the States under Section 6, is provided for by Section 15 of the Act. The authorization for appropriations under Section 15 expires on June 30, 1976. Under this section, the Act authorized to the Department of Commerce $2 million for FY 1974, $1.5 million for FY 1975 and $2 million for FY 1976. The authorization for appropriations under Section 6 expires on June 30, 1977.

Under Section 15 of the Act, funds in the amount of $2.0 million will be required to carry out the program in FY 1977 and FY 1978. These figures represent the best estimate of our Department's needs to implement the program. There are many unknown factors involved in predicting the future costs of the program since our program costs are directly related to the animals and plants listed on the U.S. Endangered and Threatened Species Lists and those under consideration for possible future listing.

Amendatory legislation is vitally needed to continue the authorization under this landmark Act.

[Exec. Comm. No. 1077]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 15, 1975.

Hon. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith is draft legislation to extend the authorizations for appropriations in the Endangered Species Act of 1973 (P.L. 93–205; 87 Stat. 884).

We recommend that this bill be referred to the appropriate Committee for consideration, and that it be enacted.

Man's activities threaten a growing number of species of plants and animals with extinction. Environmental change is taking place so rapidly that further delay in protection of endangered species and their habitats pushes certain species inevitably closer to the brink of extinction, making recovery more difficult and costly.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of Commerce) to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is our intent to prevent other species from becoming endangered.

In order to implement activities aimed at accomplishing these goals, the Endangered Species Act provides for grant-in-aid to States not to exceed $10 million for the first three years after enactment and a general authorization of an amount not to exceed $4 million for FY 1974, $8 million for FY 1975 and $10 million for FY 1976 to enable the Department of the Interior to carry out functions and responsibilities of the Act other than grant-in-aid.

Since December 28, 1973, we have taken these major steps in the implementation of the Act:

1. As prescribed by the Act, what were formerly the native list and foreign list of endangered species have been consolidated into one list and published.
2. Status surveys have been started and/or completed on the wolves of North America, green sea turtle, Sirenians, American Alligator, American crocodile, grizzly bear and spotted cats.
3. Guidelines on submission of cooperative agreements and model legislation for use by the States to develop endangered species laws in accordance with provisions of the 1973 Act have been prepared and distributed.
4. Recovery plans have been prepared through first draft for 29 species.
5. Seven workshops have been conducted for training Service, other Federal agency and State personnel in recovery plan preparation.
6. Orientation workshops were conducted in each Regional Office of the U.S. Fish and Wildlife Service for Service and other Federal and State personnel to explain the provisions and applications of the 1973 Act.

Approximately $7.37 million and 170 man-years of effort will be available in the Fish and Wildlife Service to carry out the endangered species program other than grant-in-aid and land acquisition in FY 1976. Our proposed bill would extend the authorization for appropriations at the FY 1976 level of $10 million for FY 1977 and for FY 1978.

This recommendation is consistent with the President's moratorium on new Federal spending programs other than those involving energy production, national defense, and certain humanitarian efforts, and his stated policy to avoid excessive growth of Federal spending in the long run.

We urge enactment of the proposed legislation in order to assure continuation of programs aimed at preventing the continued decline of our living natural resources.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

A BILL To amend the Endangered Species Act of 1973 to extend authorizations for appropriations, and for other purposes

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the Endangered Species Act of 1973 (87 Stat. 884) is amended as described in Section 2 of this Act.

SEC. 2. Section 15(A) is amended by deleting the words "fiscal year 1976." and inserting in lieu thereof the words, "fiscal year 1976, 1977 and 1978,".

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 5, 1976.

Hon. LEONOR SULLIVAN
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to the request of your Committee for the views of this Dpartment on H.R. 8092, a bill "To extend the authorization for appropriations to carry out the Endangered Species Act of 1973."

We recommend enactment of H.R. 8092 if it is amended as suggested herein.

H.R. 8092 would extend the authorization for appropriations at the FY 1976 level of $10 million for FY 1977 and for FY 1978. The bill also contains a transition period authorization of $2.5 million. The bill provides in subsection (2) an authorization for the Department of Commerce to carry out its function under the Endangered Species Act. This report does not address the Commerce authorization.

With the exception of the transition period authorization and the Commerce authorization, H.R. 8092 is identical to the provisions of the Administration's proposal for the extension of the authorization for appropriations to carry out the Endangered Species Act. The Administration's proposal was transmitted to the Congress on May 15, 1975. H.R. 8092 contains a transition period authorization of $2.5 million which is not included in the Administration's proposed legislation.

An authorization for the transition period is unnecessary as funds to cover this period have been included in the Department of the

Interior's fiscal year 1976 appropriations Act, P.L. 94–165. Therefore, we recommend the following amendment: strike all after "1976," on line 8, page 1, through "fiscal years" on line 2 page 2 of the bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic; existing law in which no change is proposed is shown in roman):

SECTION 15 OF THE ENDANGERED SPECIES ACT OF 1973

(16 U.S.C. 1542; P.L. 93–205)

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed $4,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 **[**and not to exceed $10,000,000 for fiscal year 1976,**]** , *not to exceed $10,000,000 for fiscal year 1976, and not to exceed the total of $25,000,000 for fiscal years 1977 and 1978*, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed $2,000,000 for fiscal year 1974, $1,500,000 for fiscal year 1975 **[**and not to exceed $2,000,000 for fiscal year 1976,**]**, *not to exceed $2,000,000 for fiscal year 1976, not to exceed $500,000 for the period begining July 1, 1976, and ending September 30, 1976, and not to exceed the total of $5,000,000 for fiscal years 1977 and 1978*, to enable the Departmnet of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

DISSENTING VIEWS ON H.R. 8092

The rapid and excessive growth of the national debt has caused such severe problems for this Nation that a new realism has developed. The essence of this new realism is that the Federal Government can no longer incur the large deficits which have characterized the recent past. Clearly the Congress and the Nation must accept the responsibility for restraining Government spending.

Recognizing that there is a limit on available resources which will result in the setting of priorities and while it is clear that environmental protection has a very high priority, it is also clear that the Nation cannot afford to fund these priorities at the maximum level at this point in time.

For these reasons, we cannot support H.R. 8092 as reported by the Merchant Marine and Fisheries Committee. This bill exceeds the President's budget request by approximately $3 million in fiscal year 1977. It is also likely the fiscal year 1978 authorization approved by the Committee will far exceed what the President has determined is necessary and appropriate for the Departments of Commerce and Interior to discharge their responsibilities under the Endangered Species Act.

GENE SNYDER.
BOB BAUMAN.

[From the Congressional Record, Mar. 15, 1976]

HOUSE CONSIDERATION AND PASSAGE OF H.R. 8092, AS AMENDED

ENDANGERED SPECIES ACT AUTHORIZATION

Mrs. SULLIVAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8092) to extend the authorization for appropriations to carry out the Endangered Species Act of 1973, as amended.

The Clerk read as follows:

H.R. 8092

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "and not to exceed $10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof ", not to exceed $10,000,000 for fiscal year 1976, and not to exceed the total of $25,000,000 for fiscal years 1977 and 1978,"; and

(2) by striking out "and not to exceed $2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof ", not to exceed $2,000,000 for fiscal year 1976, not to exceed $500,000 for the period beginning July 1, 1976, and ending September 30, 1976, and not to exceed the total of $5,000,000 for fiscal years 1977 and 1978,".

The SPEAKER. Is a second demanded?

Mr. RUPPE. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The gentlewoman from Missouri (Mrs. Sullivan) is recognized.

Mrs. SULLIVAN. Mr. Speaker, H.R. 8092 extends the authorizations for appropriations to the Departments of Interior and Commerce to carry out the provisions of the Endangered Species Act of 1973. The existing authorizations for both Departments expire on June 30, 1976.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior and the Secretary of Commerce to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is the intent of the program to prevent other species from becoming endangered.

The committee held 3 days of oversight hearings on the Endangered Species Act in October 1975, to examine its implementation and administration. Although substantial progress had been made in implementing parts of the act, the testimony presented indicated that there have been many problems and delays encountered in implementing the act.

Some of those problems were clearly the result of manpower and funding shortages. In addition, the International Convention on Endangered Species took effect on July 1, 1975, which now requires us to take steps to delineate the U.S. scientific and management authorities in order to implement our responsibilities. When these steps are taken, the Departments must be properly staffed and financially equipped to do their job.

For these reasons, the committee increased the authorized appropriations for both Departments for the next 2 fiscal years. Accordingly, the Department of the Interior was authorized a total of $25 million for fiscal year 1977 and fiscal year 1978, and the Department of Commerce a total of $5 million for the same period.

I would urge my colleagues to support this worthwhile legislation to insure the effective management of these unique living resources.

Mr. LEGGETT. Mr. Speaker, will the gentlewoman yield?

Mrs. SULLIVAN. I yield to the gentleman from California (Mr. Leggett).

Mr. LEGGETT. Mr. Speaker, I thank the gentlewoman for yielding to me.

Mr. Speaker, I rise in support of H.R. 8092 to extend authorizations for appropriations for the Departments of the Interior and Commerce pursuant to the Endangered Species Act of 1973.

The Endangered Species Act is a complex, far reaching, and forceful conservation law which was intended to provide special protection to the dwindling number of our unique and valuable living resources. This legislation was a recognition of the fact that the variety of species in our ecosystem provide not only a pleasing asethetic surrounding, but also an educational, scientific, and economic resource. The provisions of the Endangered Species Act have had to be implemented in a careful and judicious manner in order to achieve an effective and timely program of listing and delisting species, processing permits, cooperating with State conservation agencies, acquiring the critical habitat of endangered species, and assisting other countries in this endeavor.

The oversight hearings held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment in October 1975, served to demonstrate the magnitude of the job yet to be done in implementing and administering this important act. The Department of the Interior has been playing catchup in listing endangered species since the enactment of the strengthened amendments in 1972, and have just started to consider the designation of areas of critical habitat for protection of these species. This habitat designation is perhaps the most important step to be taken to ensure that an endangered species is preserved.

The listing process in itself is meaningless unless the Departments take the appropriate steps to protect the species habitat. Although the Interior Department has received petitions to list some 24,000 species of plants and animals, the Department has initiated action on only about 15 percent of these species and have listed only 16 species since the 1973 act without designating one critical habitat. The Department estimates that it takes 36 professional person days and five clerical person days to list a species. Thus, the Department has a formidable task ahead.

Moreover, the act calls for an international program of financial assistance to foreign countries to develop and manage programs which the Secretary determines to be necessary and useful for the conservation of any endangered species. To date, the Department of the Interior stated that little progress has been made in this area because of funding and personnel shortages.

The most significant action yet to be taken by the United States to fulfill our international obligations pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora is the designation of implementing management and scientific authority. Apparently, the draft Executive order to implement this authority has been in the Office of Management and Budget for review for several months. The Department of the Interior recently indicated that they expect execution of this order momentarily. Once these authorities are established, the Department of the Interior must be prepared to carry out the additional responsibility contained in the International Convention.

I have only mentioned a few of the most important areas of unfinished work concerning the implementation and administration of the Endangered Species Act. Considering the importance of the Endangered Species Act and the volume of classification work which remains undone, a modest increase in the authorization provided the Departments of Commerce and Interior is, in the committee's opinion, justified. It is anticipated that these funds will be utilized for the hiring of additional staff and for the completion of appropriate scientific studies.

The Department of the Interior has requested $10 million for fiscal year 1977 while the Department of Commerce had requested $2 million for the same period. During our oversight hearings, both Departments indicated that although the requested funding level would be adequate, the program could not go forward at a desirable pace. Therefore, the committee made the determination that increased funding was not only desirable, but necessary to achieve an effective and workable program.

Finally, I might note that H.R. 8092 was further amended in committee to delete the transition period funding for the Department of the Interior since the Department has already received authorization for appropriations to continue all Fish and Wildlife Service programs during the transition period under the 1976 Appropriations Act.

Mr. Speaker, I would urge the Members to enact this legislation promptly so that the work of these agencies can go forward.

Mr. RUPPE. Mr. Speaker, the Earth's history is replete with examples of animal and plant species which became extinct. Until modern man's influence became felt, the primary forces threatening a species survival were the changing environment of a developing Earth and the process of natural selection. However, in today's world, man and his activities have replaced nature as the main factors threatening the survival of various species of flora and fauna.

The Endangered Species Act was born out of this Congress concern for the preservation and protection of the world's fauna and flora. The act, as has already been pointed out, has two key elements, the listing of species as endangered or threatened and the designation of habitats critical to the survival of those species. Once listed as endangered or threatened, the act prohibits the taking, importing, exporting, and interstate transport of endangered species or any parts and products thereof. These protections against commercial exploration have been a vital factor in the continued survival of hundreds of animals.

Listing, however, is only the first step toward a species protection. Of equal and perhaps greater importance is the determination of the habitat and the protection of the habitat critical to that species' survival.

Unfortunately, the Departments of Commerce and the Interior, which are charged with responsibility for implementing the Endangered Species Act, have been unable to perform their responsibilities at the optimal level.

Although many species of wildlife have been listed as endangered and threatened, the Departments have a backlog of several thousand species which they feel might require protection afforded by listing. Due to limitations on resources, the Departments have been unable to begin working on these species. The Department of the Interior for example employs only eight professionals part time to work on this listing process. Furthermore, due to limited resources, the Department has yet to list a single plant as endangered or threatened, although the Smithsonian Institute in December 1974, recommended that some 3,000 species of flora be considered for listing.

The Departments' record with respect to the designation of critical habitat has been more severely restricted by lack of resources. Although it has been determined that there are 108 species of fauna which should have a high priority in the designation of critical habitat, the Departments resources have only permitted them to begin work on nine. Again, the central limiting factor has been the lack of personnel and the lack of adequate funding necessary to undertake the necessary scientific research and surveys.

Recognizing the need to provide both the Department of Commerce and the Department of the Interior with the tools necessary to achieve the goals of the act, the Merchant Marine and Fisheries Committee approved legislation authorizing a modest increase in the authorization under the act. Although the Departments have estimated that the optimal funding of the endangered species program would be approximately $20 million in each of fiscal year 1977 and fiscal year 1978, the committee recognizes that there are only finite resources with which to fund existing governmental programs. Therefore, the committee-approved legislation provides for a modest increase in the fiscal year 1977 authorization, an increase which is well below the optimal funding the Departments estimate they require. The authorization provided in H.R. 8292 is, in my view, the minimum amount necessary for the agencies to meet their responsibilities and I urge my colleagues' support for the measure.

Mr. Speaker, I yield such time as he may consume to my distinguished colleague, the gentleman from New Jersey (Mr. Forsythe).

Mr. FORSYTHE. Mr. Speaker, I rise in support of the legislation.

Mr. Speaker, in the wake of man's progress are strewn the remains of many species, plants and animals, which have become extinct. Continued commercial exploration and the impact of habitat destruction now threatens hundreds of species with a similar fate. As my colleague from Michigan has pointed out, the essential elements of the Endangered Species Act are the listing of species as endangered or threatened and the designation of critical habitat.

However, there are other programs of the Endangered Species Act which have been underfunded. For example, the act contemplates the registration of all importers and exporters of wildlife as a necessary tool of enforcement. Unfortunately, due to a lack of resources, this element of the enforcement program has yet to be implemented.

Similarly, the act establishes a program of international assistance using excess foreign currencies held by the United States to assist nations desirous of establishing an endangered species program. It appears that in fiscal year 1977 approximately $600,000 in excess currencies will be available for distribution. Although none of the funds authorized in H.R. 8092 will be distributed overseas, certain of these funds will be used to administer this program.

Of greater importance, within the context of H.R. 8092, is the fact that the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which the United States is a signatory, will enter into force in fiscal year 1977 or fiscal year 1978. This convention charges each member nation with regulating the taking, importing, and exporting of all the species listed as endangered or threatened pursuant to the convention. Approximately 200 of these species are not yet on the U.S. list. The convention also directs that each member nation establish a scientific authority to evaluate the merits of the taking, importing, or exporting of these species. The establishment and operation of the scientific authority and the new enforcement responsibilities which will be placed on the departments require additional authorization which has been provided for in H.R. 8092. The Endangered Species Act is an important statute and I urge the adoption of H.R. 8092 which provides the minimum funding necessary for the implementation of that act.

Mr. CONTE. Mr. Speaker, I rise in support of the bill to extend the Endangered Species Act of 1973.

The goal of the endangered species program is to maintain a diversity of species of animals and plants that are endangered with extinction or threatened with endangerment. The eventual goal of the program is to restore such species to the point at which it is once again a viable component of its ecosystem.

So far, considering the limited funding, the legislation has been successful. However, the time has come to increase our efforts to enable full implementation of the act.

At face value, one naturally assumes that this legislation is designed to protect fish and wildlife. This legislation, however, is also designed to protect endangered plant life. Because of low funding, no plants have been listed as an endangered species as yet. This is a serious situation. The Smithsonian Association alone suggests that 3,000 species of the plant be put on the endangered list and come under protection of the act.

Now, I realize at first blush we might question the priority of funding efforts to protect 3,300 types of plant life. It is clear funding priorities must be considered. However, if a species of plant, which is an integral element of the diet of a species of wildlife, that species of plant must be protected. There is a natural ripple effect in the "balance of nature."

The additional funding levels in this bill would enable such valued plantlife to be protected. One of the main causes of animals extinction is the absence of adequate habitat and diet. This bill, fully implemented, would attack the problem at each direction.

I urge my colleagues to support this legislation.

Thank you, Mr. Speaker.

The Speaker. The question is on the motion offered by the gentlewoman from Missouri (Mrs. Sullivan) that the House suspend the rules and pass the bill H.R. 8092, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

[From the Congressional Record, June 17, 1976]

House Passage of S. 3122 in Lieu of H.R. 8092 as Previously Passed

Extending Authorization for Appropriations for Endangered Species Act of 1973

Mr. Leggett. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3122) to extend the authorization for appropriations to carry out the Endangered Species Act of 1973, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The Speaker. Is there objection to the request of the gentleman from California?

Mr. Forsythe. Mr. Speaker, reserving the right to object, I will not object, but I take this time to ask the chairman of my subcommittee to explain just what the contents of this bill are.

Mr. Leggett. Mr. Speaker, will the gentleman yield?

Mr. Forsythe. I yield to the gentleman from California.

Mr. Leggett. Mr. Speaker, on March 15, 1976, the House passed H.R. 8092, a bill similar to S. 3122.

Mr. Speaker, H.R. 8092, as it passed the House, would amend the Endangered Species Act of 1973 to extend the authorization for appropriations to carry out the act. In this regard, the bill would authorize to be appropriated to the Secretary of the Interior $25 million for fiscal years 1977 and 1978. The bill would also authorize to be appropriated to the Secretary of Commerce $500,000 for the transition period—from July 1, 1976, to September 30, 1976—and $5 million for fiscal years 1977 and 1978.

Mr. Speaker, S. 3122 as it passed the Senate, is identical to the House passed bill, except S. 3122 would authorize to be appropriated to the Secretary of the Interior the sum of $1.8 million for the transition period.

Mr. Speaker, the Department of the Interior, in its report on the legislation, advised that it was unnecessary to provide an appropriation authorization for the transition period for the Department since funds to cover this period—amounting to $1.8 million—had been included in the Department's fiscal year 1976 appropriations pursuant to the authority contained in Public Law 94–144. Consequently, the appropriation authorization for the transition period for the Secretary of the Interior—as provided in S. 3122—is merely duplicative of the appropriation authorization contained in Public Law 99–144.

Mr. Speaker, the difference between the two versions of the bill is technical in nature and instead of insisting on the Senate passing the House bill, H.R. 8092, and substituting the language of S. 3122 as it passed the Senate and returning the House bill to the House for consideration, as it should have done, I am urging the House to adopt S. 3122, as it passed the Senate.

Mr. Speaker, it has been the practice in the past to send to the President for signature the bill which passed the House or Senate first and I realize the action I am recommending at this time is an exception to this practice. However, I am recommending that we take the Senate bill in this instance in order to avoid an extra step in the legislative process.

Mr. Speaker, S. 3122 would not result in any additional cost to the Federal Government and I urge its prompt passage.

Mr. Speaker, I hope the Senate will not make this unusual procedure necessary in the future.

Mr. Forsythe. Mr. Speaker, I withdraw my reservation of objection.

The Speaker. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3122

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "(A) not to exceed $4,000,000" and all that follows through "$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof "(1) not to exceed $10,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978,"; and

(2) by striking out "(B) not to exceed $2,000,000" and all that follows through "$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed $2,000,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977, and the final year ending September 30, 1978,".

Mr. Ruppe. Mr. Speaker, I rise in support of this legislation to extend the authorizations for appropriations for the Departments of the Interior and Commerce to implement their respective responsibilities under the Endangered Species Act of 1973.

The Endangered Species Act was generated by Congress' concern for the preservation and protection of the world's fauna and flora. The act has two key elements, namely, the listing of species as endangered or threatened and the designation of habitats critical to the survival of those species. Once listed as endangered or threatened, the act prohibits the taking, importing, exporting, and interstate transport of endangered species or any parts and products there of. These protections against commercial exploration have been a vital factor in the continued survival of hundreds of animals. Of equal and perhaps greater importance than the listing of a species as endangered is the determination of the habitat and the protection of the habitat critical to that species' survival.

Unfortunately, the Departments of Commerce and the Interior have been unable to perform their responsibilities at the optimal level. Although many species of wildlife have been listed as endangered and threatened, the Departments have a backlog of several thousand species which they feel might require protections afforded by listing. Due to the lack of personnel and adequate funding, the Departments have been unable to begin working on those species.

The Departments' record with respect to the designation of critical habitat has been more severely restricted by lack of resources. Although it has been determined that there are 108 species of fauna which should have a high priority in the designation of critical habitat, the Departments' resources have only permitted them to begin work on nine. Again, the central limiting factor has been the lack of personnel and adequate funding necessary to undertake the scientific research and surveys.

Recognizing the need to provide both the Department of Commerce and the Department of the Interior with the tools necessary to achieve the objectives of the act, the Merchant Marine and Fisheries Committee approved and the House passed legislation authorizing a modest increase in the authorizations under the act. This increase is reflected in the legislation before us today. I urge my colleagues' support for this measure.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsideration was laid on the table.

[From the Congressional Record, Mar. 10, 1976]

REMARKS OF SENATOR MOSS ON INTRODUCTION OF S. 3122

By Mr. Moss (by request):

S. 3122. A bill to amend the Endangered Species Act of 1973 to extend authorizations for appropriations. Referred to the Committee on Commerce.

Mr. Moss. Mr. President, I introduce by request, for appropriate reference, a bill to amend the Endangered Species Act of 1973 to extend authorizations for appropriations, and for other purposes, and ask unanimous consent that the letter of transmittal be printed in the Record together with the text of the bill.

There being no objection, the bill and letter were ordered to be printed in the Record, as follows:

S. 3122

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That section 15(A) of the Endangered Species Act of 1973 (16 U.S.C. 1542(A)), is amended by deleting "fiscal year 1976" and inserting in lieu thereof, "fiscal years 1976, 1977, and 1978,".**

U.S. Department of the Interior,
Washington, D.C., May 15, 1975.

Hon. Nelson Rockefeller,
President of the Senate,
Washington, D.C.

Dear Mr. President: Transmitted herewith is draft legislation to extend the authorizations for appropriations in the Endangered Species Act of 1973 (P.L. 93-205; 87 Stat. 884).

We recommend that this bill be referred to the appropriate Committee for consideration, and that it be enacted.

Man's activity threaten a growing number of species of plants and animals with extinction. Environmental change is taking place so rapidly that further delay in protection of endangered species and their habitats pushes certain species inevitably closer to the brink of extinction, making recovery more difficult and costly.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of Commerce) to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthened the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is our intent to prevent other species from beginning endangered.

In order to implement activities aimed at accomplishing these goals, the Endangered Species Act provides for grant-in-aid to States not to exceed $10 million for the first three years after enactment and a general authorization of an amount not to exceed $4 million for FY 1974, $8 million for FY 1975 and $10 million for FY 1976 to enable the Department of the Interior to carry out functions and responsibilities of the Act other than grant-in-aid.

Since December 28, 1973, we have taken these major steps in the implementation of the Act:

1. As prescribed by the Act, what were formerly the native list and foreign list of endangered species have been consolidated into one list and published.
2. Status surveys have been started and/or completed on the wolves of North America, green sea turtle, Sirenians, American alligator, American crocodile, grizzly bear and spotted cats.
3. Guidelines on submission of cooperative agreements and model legislation for use by the States to develop endangered species laws in accordance with provisions of the 1973 Act have been prepared and distributed.
4. Recovery plans have been prepared through first draft for 29 species.
5. Seven workshops have been conducted for training Service, other Federal agency and State personnel in recovery plan preparation.
6. Orientation workshops were conducted in each Regional Office of the U.S. Fish and Wildlife Service for Service and other Federal and State personnel to explain the provisions and applications of the 1973 Act.

Approximately $7.37 million and 170 man-years of effort will be available in the Fish and Wildlife Service to carry out the endangered species program other than grant-in-aid and land acquisition in FY 1976. Our proposed bill would extend the authorization for appropriations at the FY 1976 level of $10 million for FY 1977 and for FY 1978.

This recommendation is consistent with the President's moratorium on new Federal spending programs other than those involving energy production, national defense, and certain humanitarian efforts, and his stated policy to avoid excessive growth of Federal spending in the long run.

We urge enactment of the proposed legislation in order to assure continuation of programs aimed at preventing the continued decline of our living natural resources.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely yours,

Royston C. Hughes,
Assistant Secretary of the Interior.

Calendar No. 795

94TH CONGRESS
2D SESSION

S. 3122

[Report No. 94-837]

IN THE SENATE OF THE UNITED STATES

MARCH 10, 1976

Mr. Moss (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce

MAY 14, 1976

Reported by Mr. Moss, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Endangered Species Act of 1973 to extend authorizations for appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That section 15(A) of the Endangered Species Act of 1973 (16 U.S.C. 1542(A)), is amended by deleting "fiscal year 1976" and inserting in lieu thereof, "fiscal years 1976, 1977, and 1978,".~~

That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "(A) not to exceed $4,000,000" and all that follows through "$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu

thereof "(1) not to exceed $10,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,"; and

(2) by striking out "(B) not to exceed $2,000,000" and all that follows through "$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed $2,000,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,".

Amend the title so as to read: "A bill to extend the authorization for appropriations to carry out the Endangered Species Act of 1973.".

Calendar No. 795

94th Congress } SENATE { Report
2d *Session* } { No. 94–837

ENDANGERED SPECIES ACT OF 1973 REAUTHORIZATION

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 3122

TO AMEND THE ENDANGERED SPECIES ACT OF 1973 TO EXTEND AUTHORIZATIONS FOR APPROPRIATIONS

May 13, 1976.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1976

Calendar No. 795

94th Congress
2d Session

SENATE

Report
No. 94–837

ENDANGERED SPECIES ACT OF 1973 REAUTHORIZATION

May 13, 1976.—Ordered to be printed

Mr. Moss, from the Committee on Commerce,
submitted the following

REPORT

[To accompany S. 3122]

The Committee on Commerce, to which was referred the bill (S. 3122) to amend the Endangered Species Act of 1973 to extend authorizations for appropriations, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

Purpose and Summary

The purpose of S. 3122 is to extend and increase the authorization for appropriations for the Department of the Interior and the Department of Commerce for administration of the Endangered Species Act of 1973.

The bill increases the current Interior Department funding level from $10 million per fiscal year to $1.8 million for the fiscal transitional period and a combined total of $25 million for the 2 fiscal years 1977 and 1978. The Commerce Department's current funding level of $2 million per fiscal year is increased to $500,000 for the fiscal transitional period and a combined total of $5 million for the 2 fiscal years 1977 and 1978.

Background and Need

The Endangered Species Act of 1973 strengthens its 1966 and 1969 predecessors to give the Secretary of Interior and the Secretary of

Commerce major new authority to protect species of plants and animals which are on the brink of extinction. Using the best scientific and commercial information available to him, the Secretary of the Interior, after consultation with the States, and when a marine mammal is under consideration, with the Secretary of Commerce, has the authority to determine when a species is either endangered (in imminent danger of extinction) or threatened (likely to be in danger of extinction in the near future) and to promulgate regulations for its protection. Once a species has been designated as endangered, the act makes it illegal to take, import, export, or engage in interstate or foreign commerce in that species or in its parts or products.

The act also provides the Secretary of the Interior with the authority to—

—designate habitat which is critical for the survival of an endangered or threatened species. Once critical habitat has been designated, no Federal agency may undertake projects which endanger the existence of these species, or result in the destruction of the habitat.

—provide financial assistance to the States for endangered species programs.

—provide assistance to other nations for endangered species programs.

—provide for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which the United States is a signatory.

The ultimate goal of the Endangered Species Act is to maintain a diversity of species and to preserve in their natural ecosystems both endangered and threatened species. Wherever possible, the program seeks to restore such species to the point where it is once again a viable component of its ecosystem. Further it is the intent of the act to prevent other species from becoming endangered through restoration of habitat, research, and other scientific resource management activities.

With the exception of the State grant-in-aid program which is authorized by section 6 of the act and which expires on June 30, 1977, funding for administration of the act by the Departments of Interior and Commerce is authorized by section 15 (A) and (B) respectively. Under this section, there is authorized to be appropriated not to exceed $4 million for fiscal year 1974, $8 million for fiscal year 1975, and $10 million for fiscal year 1976 for the Department of Interior to carry out its responsibilities under the act. An amount of $2 million for fiscal year 1974, $1.5 million for fiscal year 1975, and $2 million for fiscal year 1976 is authorized for expenditure by the Department of Commerce. Inasmuch as the authorizations expire on June 30, 1976, it is essential that Congress extend funding under the act in order to continue this important conservation program.

On May 6, 1976, the Subcommittee on the Environment held a hearing on three bills to extend the authorization for the Endangered Species Act, including S. 2334, introduced by request of the Department of Commerce, which continues the current Commerce Department funding level through fiscal year 1978; S. 3122, introduced by request of the Department of the Interior which, as introduced, continues the Department of the Interior's current funding level through fiscal year 1978; and H.R. 8092, which combines both authorizations.

increases Interior's authorization to a total of $25 million for fiscal years 1977 and 1978, and increases the Commerce Department's authorization to a total of $5 million for fiscal years 1977 and 1978, and $500,000 for the fiscal transitional period. At the hearing, representatives of the two Departments indicated that the funding levels contained in S. 2334 and S. 3122 would permit them to carry out adequately their endangered species programs for fiscal years 1977 and 1978.

Testimony received at the hearing indicated that implementation of the act has not occurred as rapidly as might be expected, due in part to a shortage of funding and personnel. For instance, although 10 species have been listed as endangered and 11 as threatened since passage of the act, the Department of Interior has information on another 20,000 species which they suspect may require protective listing. Before the species can be listed, however, the Department must carry out extensive investigations to determine their actual status. Furthermore, no plants have yet been listed as either endangered or threatened, although the Smithsonian Institute recommended the listing of some 3,000 species of flora in December of 1974. Approximately 200 species listed as endangered or threatened pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which the United States is a signatory, have not yet been placed on the U.S. list. Finally, although the key to the survival of a species is the preservation of its habitat, only one critical habitat, that for the snail darter, has been designated under section 7 of the act. While the Departments of Commerce and Interior have indicated the desire to move ahead on all of these activities, to do so will require funding and personnel above currently authorized levels.

On May 11 the Senate Commerce Committee approved in executive session a substitute text for S. 3122 which combines the reauthorizations for the administration of the Endangered Species Act by the Interior Department and the Commerce Department. Interior Department funding is increased by a total of $6.8 million over the administration's request, including $1.8 million for the transitional period and a total increase of $5 million for fiscal years 1977 and 1978. The authorization for the Commerce Department is increased by a total of $1.5 million over the administration's request, including $500,000 for the transitional period and a total increase of $1 million for fiscal years 1977 and 1978. It is anticipated that the additional funds will be used by the Departments for scientific investigations and to implement more fully other provisions of the act. Finally, the bill combines two fiscal years' authorization into one amount in order to permit the Departments more flexibility in expenditure of these funds.

Legislative History

S. 3122 was introduced by request of the Department of the Interior on March 10, 1976 and referred to the Subcommittee on the Environment on March 17, 1976. On May 6 the Subcommittee held a day of hearings on this legislation and two other bills, H.R. 8092 and S. 2334, which reauthorize the Endangered Species Act of 1973. On May 11, 1976 the Senate Committee on Commerce ordered reported S. 3122 with a substitute text.

SECTION-BY-SECTION ANALYSIS

The bill extends and increases the authorization for appropriations for the Department of the Interior and the Department of Commerce for administration of the Endangered Species Act of 1973. The current Interior Department authorization of $10 million is increased to $1.8 million for the transitional period and a combined total of $25 million for fiscal years 1977 and 1978. The current Commerce Department authorization of $2 million per year is increased to $500,000 for the fiscal transitional period and a combined total of $5 million for fiscal years 1977 and 1978.

ESTIMATED COSTS

Pursuant to the requirements of section 252 of the Legislative Reorganization Act of 1969, the Committee estimates that in the event this legislation is enacted into law, the additional cost to the Federal Government would be as follows: $2.3 million for the fiscal transitional period and a combined total of $30 million for fiscal years 1977 and 1978.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 15 OF THE ENDANGERED SPECIES ACT OF 1973

(16 U.S.C. 1542; Public Law 93-205)

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

[(A) not to exceed $4,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 and not to exceed $10,000,000 for fiscal year 1976.] *(1) not to exceed $10,000000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978*, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

[(B) not to exceed $2,000,000 for fiscal year 1974, $1,500,000 for fiscal year 1975 and not to exceed $2,000,000 for fiscal year 1976.] *(2) not to exceed $2.000,000 for the fiscal year ending June 30, 1976. not to exceed $500,000 for the fiscal transitional period ending September 30. 1976. and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978*, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

TEXT OF S. 3122, AS REPORTED

A BILL To extend the authorization for appropriations to carry out the Endangered Species Act of 1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out "(A) not to exceed $4,000,000" and all that follows through "$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof "(1) not to exceed $10,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,"; and

(2) by striking out "(B) not to exceed $2,000,000" and all that follows through "$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed $2,000,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,".

AGENCY COMMENTS

Inasmuch as S. 2334 and S. 3122 were introduced by request, the Committee received no agency comments on these bills. The Committee did receive one agency comment on H.R. 8092, which is similar to S. 3122, as reported. This is as follows:

GENERAL COUNSEL OF THE U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., April 30, 1976.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 8092, an act to extend the authorization for appropriations to carry out the Endangered Species Act of 1973.

H.R. 8092 would amend the Endangered Species Act of 1973 by extending the authorization for appropriations to the Departments of Commerce and the Interior. The existing authorization for both Departments expires June 30, 1976.

The Department strongly supports enactment of legislation to extend the authorization of appropriations for the Department of Commerce under section 15(B) of the Endangered Species Act of 1973. Passage is imperative to the continuation of our program for the conservation of "endangered" and "threatened" species.

H.R. 8092, an act, increases the appropriation authorization under section 15(B) of the Endangered Species Act of 1973 for the Department of Commerce to $5 million for fiscal years 1977 and 1978. The Department has submitted to the Congress draft legislation authorizing extension of the authorization at the level of $2 million per year for fiscal years 1977 and 1978. This legislation has been introduced as S. 2334. We recommend that clause (2) of H.R. 8092 be amended to conform to the provisions of S. 2334. We would defer to the Department of the Interior as to clause (1) of H.R. 8092.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the administration's program.

Sincerely,

John Thomas Smith II,
General Counsel.

[From the Congressional Record, May 18, 1976]

SENATE CONSIDERATION AND PASSAGE OF S. 3122, AS AMENDED

ENDANGERED SPECIES ACT AUTHORIZATIONS

The Senate proceeded to consider the bill (S. 3122) to amend the Endangered Species Act of 1973 to extend authorizations for appropriations which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended—

(1) by striking out: "(A) not to exceed $4,000,000" and all that follows through "$10,000,000 for fiscal year 1976," in paragraph (A) thereof and inserting in lieu thereof "(1) not to exceed $10,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,"; and

(2) by striking out "(B) not to exceed $2,000,000" and all that follows through "$2,000,000 for fiscal year 1976," in paragraph (B) thereof and inserting in lieu thereof "(2) not to exceed $2,000,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978,".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to extend the authorization for appropriations to carry out the Endangered Species Act of 1973."

[From the Congressional Record, June 21, 1976]

S. 3122 PRESENTED TO THE PRESIDENT

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, June 21, 1976, he presented to the President of the United States the following enrolled bills:

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S. 3122. An act to extend the authorization for appropriations to carry out the Endangered Species Act of 1973.

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ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Fish and Wildlife Miscellaneous, Part 4. Hearings, 94th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1976. 354 p.

Hearings on Endangered Species Authorization held Feb. 5, 6, 1976. Hearings on reimbursement for livestock loss caused by endangered species held on Mar. 26, 1976. "Serial No. 94–30"

Hearings to consider eight bills pertaining to management of marine and wildlife resources, including:

H.R. 8092, to amend the Endangered Species Act to extend the authorization for appropriations at the fiscal year 1976 level for fiscal years 1977–78.

H.R. 12057 and identical H.R. 12554, to amend the Endangered Species Act to authorize the reimbursement for any loss of or injury to livestock or pets caused by any endangered or threatened species inhabiting an area under Interior Dept control.

Hearings on H.R. 8092 include testimony from: C. Stevens (Society for Animal Protective Legislation), C. E. Wilson (Aububon Society), J. W. Grandy (Defenders of Wildlife), J. S. Gottschalk (Intl Assn of Game, Fish, and Conservation Commrs), L. A. Greenwalt (FWS), J. W. Gehringer (NMFS).

Hearings on H.R. 12057 include testimony from: G. W. Milias (FWS), M. L. Cotner (USDA), R. Holmes (Minn DNR), J. W. Grandy (Defenders of Wildlife).

U.S. Congress. Senate. Committee on Commerce. Subcommittee on Environment. To amend the Endangered Species Act of 1973. Hearings, 94th Congress, 2d session, May 6, 1976. Washington, U.S. Govt. Print. Off., 1976. 190 p. "Serial No. 94–82"

Hearings to consider S. 2334 and similar S. 3211, H.R. 8092, to authorize fiscal year 1976 transition period, fiscal year 1977 and fiscal year 1978 appropriations for Commerce and/or Interior Departments administration of Endangered Species Act of 1973.

Hearing also considers oversight of the Endangered Species Act and S. 229 and similar H.R. 10229, to propose exemptions for the interstate sale of scrimshaw and whale products stockpiled prior to enactment of the Act.

Submitted articles, correspondence, and statements include:

a. Zimmerman, David, R. "That the Peregrine Shall Live" Audubon, Nov. 1975 (p. 133-141);

b. Cade, Tom J., "Plans for Managing the Survival of the Peregrine Falcon" Raptor Research Rpt., No. 2, 1974 (p. 141–151);

c. National Parks and Conservation Association, "Help Save Our Endangered Plants" reprints of articles from Environmental J. 1975 (p. 167–190).

Hearings on May 6 include testimony from L. M. Talbot (CEQ), and G. W. Milias (FWS).

Hearing on whale products includes J. W. Gehringer (MMGS), L. Brooks (GSA), K. L. Newman (Archer Daniels Midland Co.), A. S. Bistritzky (Scandinavian Oil Co.), W. Meckes (Werner G. Smith, Inc.), A. Wickham (Friends of the Earth), S. Stevens (Society for Animal Protective Legislation).

Hearings on programs oversight includes S. Whitney (Coll. of William and Mary), L. Hood (Calif. Native Plant Society, J. S. Gottschalk (Assn of Game, Fish and Conservation Commrs), M. Newman (Fund for Animals), T. Cooper (Defenders of Wildlife), J. W. Grandy (Defenders of Wildlife).

Hearings on zoo and circus animals includes R. Thrun (Ringling Bros-Barnum and Bailey Combined Shows), G. E. Steele (Zoological Action Committee).

Hearings on Peregrine falcons includes R. A. Graham (USAF), S. A. Marcus (North Amer Falconers Assn).

ENDANGERED SPECIES ACT AMENDMENTS, PUBLIC LAW 94-359

BACKGROUND

The following quoted material is taken from a review of fisheries and wildlife conservation legislation of the 94th Congress written by CRS and issued as a committee print by the Senate Committee on Interior and Insular Affairs. (See: Congress and the Nation's Environment: Energy and Natural Resources Actions of the 94th Congress, January 1977. Committee Print. Senate Committee on Interior and Insular Affairs. Washington, U.S. Govt. Print. Off. pp. 1127-1133):

> The purpose of this legislation was to improve management of the Endangered Species Act of 1973 and to allow for the limited disposal of pre-Act, legally-obtained endangered species parts and products. The enactment of the Endangered Species Act of 1973 considerably strengthened previously existing law to protect species which are endangered or becoming endangered. It set strict prohibitions on the import and export and interstate (but not intrastate) commerce in endangered species parts or products. Implementation and administration of the Act over the past three years had given the Departments of Commerce and the Interior sufficient experience in working with statutory provisions of the Act to identify certain problems related thereto. The two Departments in October 1975 thus submitted by Executive Communication proposed amendments to the Act to clarify and remedy the problem areas. While these proposals were not introduced in bill form until October 20, 1975 (as H.R. 10229), they were the general subject of discussion during oversight hearings which the House Subcommittee on Fisheries and Wildlife Conservation and the Environment held on October 1, 2, and 6, 1975 (Serial 94-17).
>
> More specific problem areas which had previously received attention related to inconsistencies between the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 with respect to endangered species parts and products, most particularly scrimshaw, sperm oil and spermaceti. The Marine Mammal Protection Act (P.L. 92-522) prohibits the importation and sale in interstate and foreign commerce of parts and products of marine mammals but the prohibitions do not apply to marine mammals taken prior to the effective date of the Act, December 21, 1972. The Endangered Species Act of 1973 (P.L. 93-205), however, lacked such retroactive exemptions. Hearing testimony indicated the inconsistency had led to confusion in the enforcement of the laws as well as financial hardship for scrimshanders and other artisans who

dealt in carved whale bone and teeth and who possessed sometimes substantial inventories of legally acquired materials used in their craft but who were then prohibited under the 1973 Act from marketing their finished products. Similarly, stockpiles of sperm whale oil held by the General Services Administration (GSA), acquired between 1948 and 1952 pursuant to the Strategic and Critical Materials Stockpiling Act, and declared surplus and no longer strategic in 1972 by the International Materials Stockpiling Act, were likewise kept from final commercial disposal. Both private persons and the government thus held sperm oil stocks, legally acquired, which they could not put into commercial use and which were costing significant funds in storage costs just to hold. Several bills had been introduced in the 93rd and 94th Congresses addressing these problems deriving from the inconsistency between the 1972 and 1973 Acts.

The House Subcommittee on Fisheries and Wildlife Conservation and Environment held hearings on June 9 and 10, 1975 (Serial 94-7) on several bills to amend the Endangered Species Act to provide for specific exemptions for pre-Act, legally obtained sperm oil and scrimshaw. Action on those bills was then held off until completion of the October 1975 oversight hearings resulting in ultimate action on a bill offering more general exemptions and including provisions of amendments as suggested by the Executive Communications of October 1, 1975, earlier referred to. The Senate Commerce Committee, having considered without action in the 93rd Congress bills to provide relief to scrimshanders, obtained departmental and public views—through a public comment period, but not by hearings—on a similar measure introduced in the 94th Congress and then reported a bill concerned with the scrimshaw problem alone.

Specifically, S. 229 was designed to preserve the art of scrimshaw. As introduced S. 229 would amend the Endangered Species Act of 1973 by providing the Secretary of Commerce authority to grant exemptions to the prohibitions on interstate commerce in marine mammal parts to persons "for stocks for inventories of bone and teeth of marine mammals of the order Cetacea, including parts of products thereof, lawfully held within the United States on December 21, 1972." The exemption would accompany subsequent sales of such parts and products to ultimate purchasers. The bill placed the burden of proof on seekers of such exemptions to demonstrate their qualifications for same, the legal presumption prior to such demonstration being that possession of marine mammal parts or products would be in violation of the Marine Mammal Protection Act of 1972. Because of various public and Senatorial concerns that actions taken in the interests of scrimshanders not reopen commercial markets which could encourage more illicit trade in marine mammal parts to the detriment of such animals and thus negate the intent of the Marine Mammal Protection Act, the Senate

Commerce Committee reported an amendment to S. 229 in the form of a substitute bill which contained a number of new provisions (see Senate Report 94–63, pp. 2 and 3).

The Senate Commerce Committee reported S. 229 on April 4, 1975; the full Senate approved it on April 14th after making one small amendment on the floor. Offered by Mr. Moss, the additional conforming amendment provided clarifying language to insure that with respect to exemptions granted for the sale and movement in commerce of finished scrimshaw products for personal use, that the persons wishing to sell those products must also demonstrate that they have been legally taken, legally acquired, and that the person has a right to carry it in interstate commerce or dispose of it. The amendment was not contested.

The House Merchant Marine and Fisheries Committee reported its bill, H.R. 10229, on February 11, 1976. The House suspended rules and passed the bill on February 17, 1976. As reported and subsequently passed, the bill amended the Endangered Species Act of 1973 to permit the Secretary of the Interior to react more quickly to emergency protection needs of resident endangered species by waiving in such cases the requirement for a 90 day waiting period for comments and recommendations regarding a given proposed emergency regulation. The bill allowed a limited exemption to the prohibitions contained in the Endangered Species Act for certain endangered species parts or products which were legally obtained and held in the United States prior to December 28, 1973 (i.e., sperm whale oil and scrimshaw). In allowing such exemptions, the amendments to the Act require that the Convention on International Trade in Endangered Species of Wild Flora and Fauna be adhered to, and that certain procedures and conditions be scrupulously followed. In general, the terms and conditions set forth in the House bill were more stringent than those in the Senate bill.

Following passage by the House of H.R. 10229, the Senate-passed bill, S. 229, was taken up, amended to replace the contents with those of H.R. 10229, and then the amended S. 229 was passed and sent back to the Senate. On June 24, 1976 the Senate accepted the House amendments with three additional clarifying amendments. These had the effect of further defining the scope of the bill, assuring that contracts which the General Services Administration had with private firms for the disposal of surplus stocks of sperm whale oil be performed as contemplated, and of making clear that the scope of limiting exemptions did not extend to exonerate any person for any act committed prior to the enactment of S. 229 in violation of the provisions for which exemptions were not being granted nor to immunize any person from prosecution for any such illegal act. The House then concurred in these Senate amendments to the House amendments to S. 229, on June 29, 1976 and the bill was signed into law (P.L. 94–359) on July 12, 1976.

CHRONOLOGY—PUBLIC LAW 94-359

January 17, 1975—S. 229 introduced and referred to Senate Committee on Commerce.

April 4, 1975—S. 229 reported to Senate by the Committee on Commerce with amendment, S. Rept. 94-63.

April 14, 1975—S. 229 passed Senate, amended.

April 15, 1975—S. 229 referred to House Committee on Merchant Marine and Fisheries.

October 20, 1975—H.R. 10229 introduced and referred to House Committee on Merchant Marine and Fisheries.

February 11, 1976—H.R. 10229 reported to House by the Committee on Merchant Marine and Fisheries with amendment, H. Rept. 94-823.

February 17, 1976—H.R. 10229 passed House, amended.

February 17, 1976—S. 229 passed House, amended, in lieu of H.R. 10229.

June 24, 1976—Senate agreed to House amendment to S. 229, with an amendment.

June 29, 1976—House agreed to Senate amendment to S. 229 as amended.

July 1, 1976—S. 229 presented to the President.

July 12, 1976—S. 229 signed into law (P.L. 94-359).

Public Law 94-359
94th Congress, S. 229
July 12, 1976

An Act

To amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(f)(2)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)(B)(ii)) is amended by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof subsection (b)(1)(A)". Endangered Species Act of 1973, amendments.

SEC. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f)(1) As used in this subsection— Definitions.

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions: Exemption. ✓

"(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act. 16 USC 1538.

"(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application— Application.

"(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

Exemption certification.
16 USC 1538.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

Regulations.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

16 USC 6533.
Pre-Act endangered species parts, sales contract, validity.

"(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

"(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act.

"(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.".

Sec. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

Waiver.

(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such thirty-day period may be waived by

the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.".

Notice, publication in Federal Register.

Enforcement.

SEC. 4. Section 11(e)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)(3)) is amended—

(1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: ", but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.".

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof ": *Provided, however*, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.".

Approved July 12, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-823 accompanying H. R. 10229 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 94-63 (Comm. on Commerce).
CONGRESSIONAL RECORD:
Vol. 121 (1975): Apr. 14, considered and passed Senate.
Vol. 122 (1976): Feb. 17, considered and passed House, amended, in lieu of H. R. 10229.
June 24, Senate agreed to House amendment with amendments.
June 29, House concurred in Senate amendments.

94TH CONGRESS
1ST SESSION

H. R. 10229

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1975

Mrs. SULLIVAN (for herself and Mr. ZEFERETTI) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To amend the Endangered Species Act of 1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531–1543) is amended as follows:

(a) Section 4(f)(2)(B)(ii) (87 Stat. 889) is amended by striking ", (B), and (C)" after "subsection (b)(A)".

(b) Section 10(b) (87 Stat. 896) is amended by adding new paragraphs (4), (5), and (6) as follows:

"(4) The Secretary may grant to any person subject to the jurisdiction of the United States, under such terms and conditions as he may prescribe, exemptions to the prohibitions on exportation in section 9(a)(1)(A) and to the prohibitions in sections 9(a)(1)(E) and (F) for stocks or inventories of parts or products of endangered species lawfully held within the United States on December 28, 1973, in the course of a commercial activity: *Provided*, That such an exemption shall not violate the Convention or other provisions of law: *Provided further*, That such an exemption may apply to such length of time as the Secretary may determine.

"(5) The Secretary may grant to any person subject to the jurisdiction of the United States, under such terms and conditions as he may prescribe, exemptions to the prohibitions in section 9(a)(1)(A), (E), and (F) for live endangered species of fish or wildlife lawfully held in captivity in the United States on December 28, 1973: *Provided*, That such exemption shall not violate the Convention or any other provisions of law: *Provided further*, That such an exemption may apply to such length of time as the Secretary may determine.

"(6)(A) Any such exemption may be granted under subparagraphs (4) and (5) of this subsection by such Secretary upon such terms and conditions as he shall prescribe, which may include, but are not limited to, requiring such persons to register inventories within a time certain to be set by the Secretary; to maintain complete sales records and such other documents and materials as the Secretary may prescribe; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him: *Provided*, That if the Secretary requires such inventories under this subsection, he shall only grant an exemption pursuant to subparagraphs (4) and (5) for the holdings reported in such inventories: *Provided further*, That no regulations issued under this subsection shall be subject to the provisions of section 4(f)(2)(A)(i).

"(B) With respect to any act prohibited by section 9(a)(1)(A), (E), and (F) for live endangered species of fish or wildlife, or for stocks or inventories of parts or products of endangered species, there shall be a rebuttable presumption that the live endangered species of fish or wildlife, or the stocks or inventories of parts or products of endangered species involved in such act was not lawfully held within the United States on December 28, 1973.".

(c) Section 10(c) (87 Stat. 896) is amended by—

(1) striking the word "subsection" in the first sen-

tence and inserting in lieu thereof the word "section", and

(2) striking the period at the end of the second sentence and inserting in lieu thereof ", except that the thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened, and no reasonable alternative is available to the applicant. Notice of any emergency waivers granted pursuant to this subsection must be published in the Federal Register within ten days following the issuance of the permit".

(d) Section 11 (e) (3) (87 Stat. 899) is amended by—

(1) adding "make arrests without a warrant for any violation of this Act if they have reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and" before the words "execute and serve any arrest warrant,"; and

(2) striking the period at the end of the subsection and inserting in lieu thereof "; upon forfeiture, or waiver, of any such property to the United States, it shall be disposed of by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary deems appropriate".

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94–823

ENDANGERED SPECIES ACT AMENDMENTS

FEBRUARY 11, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 10229]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 10229) to amend the Endangered Species Act of 1973, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

That section 4(f)(2)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)(B)(ii)) is amended by striking out "subsection (b)(A), (B), and (C)" and inserting in lieu thereof "subsection (b)(1)(A)".

SEC. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f)(1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

"(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the 3-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection.

to ensure that any such part so exempted is adequately accounted for and not disposed contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

"(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation."

SEC. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

(2) by striking out the period at end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such 30-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within 10 days following the issuance of the exemption or permit."

SEC. 4. Section 11(e)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)(3)) is amended—

(1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: ", but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe."

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof ", provided, however, that it does not include exhibition of commodities by museums or similar cultural or historical organizations."

Amend the title to read as follows:

A bill to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to improve management of the Endangered Species Act of 1973 and to allow for the limited disposal of pre-Act, legally-obtained endangered species parts and products.

More specifically, the bill makes a number of minor changes to clarify certain ambiguities, avoid lapses of coverage, and unnecessary administrative burdens, and to create greater consistency with other similar conservation legislation, the Marine Mammal Protection Act of 1972.

LEGISLATIVE BACKGROUND

The enactment of the Endangered Species Act of 1973, significantly strengthened the existing law to protect species which are endangered or becoming endangered. Further, it set strict prohibitions on the import and export and interstate sale of endangered species parts or products. The Act did not restrict the intrastate sales of endangered species parts and products.

During the implementation and administration of the Act, the Departments of Interior and Commerce have gained considerable experience and have recognized certain problems in working with statutory provisions.

Therefore, on October 1, 1975, the two Departments submitted by Executive Communication amendments to the Act to clarify and remedy the problem areas. These amendments were the general subject of discussion during oversight hearings which were held by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on October 1, 2, and 6, 1975. Earlier, the Subcommittee had held hearings on several bills which amended the Act to provide for specific exemptions for pre-Act, legally obtained scrimshaw (H.R. 2057) and whale oil (H.R. 3456) from the prohibitions of the Act. These bills were held in abeyance until completion of the oversight hearings, at which time the discussion centered on whether specific or general exemption should be granted.

On October 20, 1975, the Administration amendments were introduced in the form of H.R. 10229. Inasmuch as the substance of the bill had been considered during five days of previous hearings, the Subcommittee considered the bill in open markup on November 6 and 7, whereafter it was reported to the Full Committee with amendments. The Full Committee held an open mark-up session on February 4, 1976, and ordered the bill reported with one additional amendment to the Subcommittee's amended version.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1973 Congress passed the Endangered Species Act of 1973 which strengthened its 1969 predecessor by prohibiting not only the importation but also the sale of endangered species and their parts and products in interstate and foreign commerce. The Endangered Species Act, however, contained no retroactive exemptions for the interstate sale of parts and products of endangered marine mammals which were legally held under the Marine Mammal Protection Act of 1972. As a result of this inconsistency between the two laws, a severe economic hardship was inflicted upon those individuals who were engaged in legitimate commercial activities and who were holding large inventories prior to the passage of the Act. Considerable testimony was presented to the Subcommittee during hearings which highlighted this problem with respect to scrimshaw and whale oil. Although the Committee felt that the commercial demand for endangered species should be eliminated and that the U.S. should take the lead by curtailing the demand of its citizens, at the same time the Committee felt that relief should be granted in these two instances.

In the case of scrimshaw, the Committee was concerned not only with the economic hardship caused by the Act but also with the preservation of the art of scrimshaw which was originated during the Nation's early years by New England whalers. These men etched designs in and carved figures from whale bone and teeth as a means of passing time during the long months spent away from home on whaling expeditions. As the Nation grew and expanded westward, the popularity of scrimshaw grew as well and today the artists practice throughout the country in New England and in areas such as the Pacific Northwest, the Southwest, Alaska and Hawaii. Today's artisans, in addition to practicing scrimshaw as it was originated in New England, have adapted the art and developed new innovations which reflect the heritage of other sections of the Nation and which are not restricted to nautical motifs.

Due to the prohibitions in the Endangered Species Act of 1973, many scrimshanders were forced to abandon their profession because the interstate market, which accounted for 85 to 95 percent of their sales, was now closed to them. Unable to dispose of their legally acquired stocks and unable to sell new scrimshaw except in intrastate commerce, these individuals turned to other professions. Although other media such as beef bone could be legally utilized, most artisans have not had sufficient time to adapt their craft to other materials. Thus, to permit these individuals to dispose of their legally acquired stocks and to assure the preservation of the art of scrimshaw, the Committee has established a special exemption from the Endangered Species Act for scrimshaw.

In respect to sperm whale oil, the legislation would permit the General Services Administration (GSA) to dispose of its stockpile of 14,739,520 pounds. This oil, which is derived from the endangered sperm whale and which is used primarily as a lubricant, was acquired between January, 1948, and June 1952, pursuant to the Strategic and Critical Materials Stockpiling Act. However, in late 1972 the Interdepartmental Materials Advisory Committee determined that sufficient substitutes existed for sperm oil and that it should not be considered a strategic material. This decision was concurred in by the Department of Defense.

At the time the stockpile was declared surplus to the Nation's needs, GSA had 23,400,000 pounds of oil in storage. Although some 8.7 million pounds have been disposed of, the prohibitions contained in the

Endangered Species Act have prevented GSA from contracting for further sale of the remainder.

The annual cost of storing this material is $38,568 per year and the total cost of storage since the oil was declared surplus has been $77,136. It is expected that the Government would realize a profit of approximately $2.7 million from the sale of the sperm whale oil. To eliminate this burden on the taxpayers and to permit persons who are now holding legally acquired stocks of sperm oil to dispose of that oil, the Committee in H.R. 10229 has provided a special exemption for the sale of this oil.

The additional sections of the bill were considered to be "housekeeping" changes required for effective management of the endangered species program.

Section-by-Section Analysis

Section 1 amends section 4(f)(2)(B)(ii) of the Act to waive the requirement that each state be allowed 90 days to submit its comments and recommendations on any regulations issued by the Secretary of the Interior or the Secretary of Commerce in regard to an emergency posing a significant risk to the well-being of any endangered or threatened species. As presently written, the Endangered Species Act mandates this 90-day delay before the emergency regulations may become effective. It seemed to the Committee that a 90-day comment period was incongruous with the need for prompt action in emergency situations. It should be noted, however, that the Committee left untouched that section of the Act which limits the duration of the emergency regulations to 120 days.

Section 2 amends the Endangered Species Act by adding new subsections (f) and (g) at the end of section 10. The new subsection (f) establishes a mechanism for granting exemptions under the Act for certain pre-act endangered species parts.

Subsection (f)(1)(A) defines for the purposes of this subsection the term "pre-act endangered species part" to mean 1) any sperm whale oil which was lawfully held in the United States on December 20, 1973, the effective date of the Endangered Species Act; and 2) any finished scrimshaw product or the raw material for such product, if such product or the raw material was lawfully held in the United States on December 20, 1973.

Subsection (f)(1)(B) further defines scrimshaw product to mean any art form which involves the etching or designs upon or the carving of figures, patterns, or designs from any bone or tooth from any mammal from the order Cetacea.

Subsection (f)(2) authorizing the Secretary of Commerce, who pursuant to the Act has management responsibility for scrimshaw and sperm whale oil, to grant an exemption for the exportation from the United States and for the interstate sale of legally-held scrimshaw and sperm whale oil.

Subsection (f)(3) directs that any person seeking an exemption shall apply to the Secretary, however, no such application may be considered unless the application is received within one year, contains a complete and detailed inventory of all pre-act endangered species parts for which the applicant seeks an exemption, is accompanied by appropriate documentation to prove that the parts were legally held on December 20, 1973, and contains such other information as the Secretary may require.

Subsection (f)(4) requires that any certificate of exemption issued by the Secretary shall specify the specific actions authorized by the permit, the parts and products to which the exemption applies, and the duration of the permit provided; however, that no permit may remain in effect for more than three years after issuance and any term or condition promulgated pursuant to section (f)(5) as the Secretary deems appropriate.

Subsection (f)(5) authorizes the Secretary to prescribe such regulations as he deems appropriate. Such regulations may set forth requirements that applicants register inventories, keep complete sales records, permit the inspection of such inventories and records, and file periodic reports with the Secretary. The Secretary may also impose conditions on any subsequent purchasers of any pre-act endangered species part covered by an exemption to insure that any such part is not disposed of contrary to the provisions of the Endangered Species Act.

Subsection (g), also added by section 2, provided for an affirmative defense where a prima facie violation of the Act is established whereby the holder must show that the permit or exemption is applicable, has been granted, and is valid and in force. A similar provision is found in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USC 855(b)) and the Act Prohibiting Foreign Fishing Vessels in the Territorial Waters of the United States (Bartlett Act) (16 USC 1082), and has been upheld in the Federal Court of Appeals.

Section 3(1) amends section 10(c) of the Endangered Species Act to clarify that notice of review of permit applications applies to the entire section 10 and not just subsection (c).

Section 3(2) makes a technical change in the Act by adding a new sentence to section 10(c) which provides that the 30-day comment period which must precede the issuance of any permit or exemption under the Act may be waived in an emergency situation where the health or life of an endangered animal was threatened and where no reasonable alternative is available to the applicant.

While the 30-day comment period has caused a lengthening of the time required to issue permits, it has apparently been generally accepted. However, there have been occasions during the past year where the health or life of an animal on the endangered species list has been threatened because of the lack of ability to waive the strict 30-day notice requirement.

The emergency waiver would not be available for the convenience of the applicant, or even to avoid serious economic loss to the applicant. It would be available only to protect the health or life of the endangered animal itself. The applicant would have to make a showing that no reasonable alternative was available. It should be noted, however, that an alternative would be considered reasonable even if it involved substantial economic loss to the applicant.

Section 4(1) amends section 11(e)(3) of the Act to permit duly authorized enforcement agents to make arrests without a warrant if the agent has reasonable grounds to believe that the person can be arrested for committing a violation in his presence or review. This authority was in the Endangered Species Conservation Act of 1969, is found in all other wildlife legislation, and was in the bills which were the basis of this Act. It appears to have been inadvertently omitted in the drafting process. It is a traditional law enforcement authority, and is necessary in the proper enforcement of this Act with its broad scope of prohibitions.

Section 4(2) further amends section 11(e)(3) of the Act to authorize the disposal other than by general sale to the public of any endangered species, parts, or products which have been forfeited to and stored by the government, thus sparing the taxpayers another unnecessary storage cost. Without these amendments the government lacks the authority to dispose of the forfeited items. The legislation makes it clear, however, that these items may not be disposed of by sale to the general public, thereby reducing the enforcement burden upon the Departments of Commerce and Interior and reducing the likelihood of the introduction of smuggled products into this Nation.

Finally, Section 5 would exclude from the definition of "commercial activity" in section 3 of the Act the exhibition of commodities by museums or smaller cultural or historical organizations. The effect of this amendment is to allow the interstate exchange of displays between such organizations without violating the Act.

COST OF THE LEGISLATION

The Committee estimates that no additional costs would be incurred in carrying out H.R. 10229, as amended, in the current fiscal year or in any of the years following this fiscal year.

COMPLIANCE WITH HOUSE RULE XI

(1) With respect to the requirements of cause 2(l)(3)(A) of Rule XI, of the Rules of the House of Representatives, three days of oversight hearings were held on the subject matter of this legislation in October 1975. Some 34 witnesses were heard by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

(2) With respect to the requirements of clauses 2(l)(3)(B) and (C), of Rule XI of the Rules, the bill does not provide new budget authority or increased tax expenditures, and it has received no estimate and comparison prepared by the Director of the Congressional Budget Office. Consequently, no such information is supplied to meet these requirements.

(3) With respect to the requirements of clause (2)(l)(3)(D), of Rule XI of the Rules, the Committee has received no report from the Committee on Government Operations on this subject.

(4) The Committee reports that enactment of H.R. 10229, as amended, would have no inflationary impact on prices and costs in the operation of the national economy.

DEPARTMENT REPORTS

The Department of the Interior transmitted to the Congress, as Executive Communication No. 1815, draft legislation which became

H.R. 10229 when introduced. This Executive Communication along with reports received from the Departments of the Interior, Commerce and State follow herewith:

[Ex. Comm. No. 1815]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 30, 1975.

Hon. CARL B. ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith are the Department of the Interior's proposed amendments to the Endangered Species Act of 1973 (P.L. 93–205; 87 Stat. 884).

We recommend that this proposal be referred to the appropriate Committee and that it be enacted.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of Commerce) to prevent the extinction of plants and animals. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthen the Secretary's ability to protect and manage listed species.

The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystem species that are endangered with extinction or threatened with endangerment. Wherever possible the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is intended to prevent other species from becoming endangered or threatened.

Since enactment of the 1973 Endangered Species Act, we have become aware of a number of problems; certain provisions need clarification or modification to expedite management and to insure equity to those individuals impacted by the Act.

Enclosure: The draft bill is now H.R. 10229 as introduced.

Of great concern to the Department of the Interior is the situation where individuals legally possessed, prior to enactment of the 1973 Act, parts or products of endangered species for the purpose of sale or for other activities of a commercial nature. A similar situation exists with respect to live animals. For example, prior to enactment of the 1973 Endangered Species Act, zoos and circuses and various other types of live animal dealers regularly engaged in the sale and interstate transport of surplus or unneeded animals which were Federally listed as endangered. The Endangered Species Act of 1969 did not prohibit such commercial activity, but prohibited only the importation of species listed as endangered. With passage of the 1973 Act, such commercial activity was prohibited.

This Department fully supported this prohibition so as to reduce the demand for certain animals whose continued existence was, and is, in jeopardy. However, we recognize that such a prohibition has also caused economic hardship on many individuals who were engaged in legitimate commercial activities prior to passage of the 1973 Act.

It is our judgment that the commercial demand for endangered animals should be reduced, and the United States should take the lead by reducing the demand of its citizens. However, we believe that a gradual reduction of this demand would create less severe economic hardship for many legitimate commercial enterprises.

The amendments proposed in subsection (b) of the proposed legislation would resolve the problems with respect to live animals and their parts or products of endangered species. The remaining proposed amendments would: (1) eliminate the 90 day comment period in issuance of emergency regulations. Such regulations cease to be in effect after 120 days unless the standard regulatory procedure is applied. As provided for in the current law, such regulations may be promulgated only in the case of an "emergency posing a significant risk to the well being of any species of fish or wildlife" and only if the Secretary publishes in the Federal Register the "detailed reasons why such regulation is necessary;" (2) clarify that notice of review of permit applications applies to the entire section 10, not just subsection (c); (3) waive the 30 day notice requirement in issuance of a permit where the health or life of an animal on the endangered species list is threatened; (4) authorize law enforcement personnel to arrest, without a warrant, persons committing violations in their presence or view; and (5) provide the Secretary with authority to dispose of forfeited property.

We urge enactment of this proposed legislation in order to assure the efficient administration of the Endangered Species Act of 1973.

The Office of Management and Budget has advised that there is no objection to the presentation of this draft bill from the standpoint of the Administration's program.

Sincerely yours,

NATHANIEL P. REED,
Assistant Secretary of the Interior.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., November 18, 1975.

Hon. ROBERT L. LEGGETT,
Chairman, Fisheries and Wildlife Conservation and the Environment Subcommittee, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the urgent request of Subcommittee counsel for the views of the Department of Commerce on the Subcommittee amendments to H.R. 10229, a bill "To amend the Endangered Species Act of 1973."

H.R. 10229 is an Administration bill that was developed jointly by the Department of Commerce and the Department of the Interior. While H.R. 10229 and the amendment each aim to improve management and promote equitable treatment for certain individuals affected by the Endangered Species Act, the relief provided in the amended version is unduly circumscribed. For that reason, we recommend adoption of the original bill.

The Subcommittee amendment would require submission of applications for exemptions within a year after regulations are promulgated to put the amendments into effect. In addition, the exemptions granted under the amended bill would expire three years after the granting of an exemption. H.R. 10229 as introduced contains no such restrictions but would provide the Secretary discretion to limit the life of any exemption as appropriate. An arbitrary statute limitation may lead to inequitable administration. Furthermore, the amendment appears to contemplate the filing of applications for exemptions and the granting of certificates of exemption on a case-by-case basis. Such a process will undoubtedly increase the costs of administration and involve processing delays. Accordingly, we recommend adoption of the exemption procedures contemplated in H.R. 10229 as introduced. They are both fair and easy to administer.

The exemption granted by H.R. 10229 would apply to all parts and products of endangered species lawfully held in stock within the United States on December 28, 1973. The amendment would restrict the exemption to sperm whale oil (which includes spermaceti) and scrimshaw lawfully held within the United States on December 28, 1973, thereby removing the availability of the exemption from persons holding parts or products of endangered species other than those specified. The benefits of the exemption would be available to scrimshanders holding stocks or carved scrimshaw, but scrimshanders could not purchase raw materials for carving from suppliers having stock on hand. Indeed, the wording of the provision casts doubt on the ability of scrimshanders to carve and sell ivory that was in their possession as uncarved stock on December 28, 1973. We urge that the provision be expanded to encompass the exemptions included in H.R. 10229 as originally introduced.

The provision found in the original bill creating a rebuttable presumption that items were not lawfully held within the United States on the effective date of the Endangered Species Act is replaced in the amendment by a provision that any person claiming the benefit of an exemption would have the burden of proving its applicability, existence, and validity. We understand that the intent of both provisions is similar and is designed to ensure that in order to prove an offense under the Act, the Government is not required to prove that no exemption applies and that no permit was granted under the Act.

We note that the parenthetical phrase added to § 11(e)(3) of the Act by the amendment permits disposition of forfeited or abandoned property by the Secretary in a manner consistent with the purposes of the Act but specifically precludes sale to the general public. We believe the discretion of the Secretary is sufficiently circumscribed by requiring disposition consistent with the purposes of the Act, and we find no reason for precluding public sale by statute.

Finally, we note what we believe may be an oversight in the final line of page 5 of the amendment which refers to "section 4(f)(2)(A)(i)." We believe that the reference should be more appropriately "section 4(f)(2)(A)." Such a change would make the amendment consistent with the change of the word "subsection" in section 10(c) of the Act to "section."

The remaining provisions of the amendments are either identical to or closely parallel those contained in H.R. 10229.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

ROBERT B. ELLERT,
Acting General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 18, 1975.

Hon. LEONOR K. SULLIVAN,
Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D.C.

DEAR MRS. SULLIVAN: This is in response to your request for our views on H.R. 10229 as reported with amendments by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

We oppose enactment of section 2 as amended to exempt from certain prohibited acts of the 1973 Endangered Species Act sperm whale oil and scrimshaw lawfully held in the course of a commercial activity prior to December 28, 1973.

We see no justifiable reason for providing an exemption for certain whale parts or products and not for other whale parts or products such as ambergris. Further, we see no justifiable reason for singling out dealers in whale oil and scrimshaw from dealers in other endangered animals or their parts or products likewise impacted by the 1973 Endangered Species Act.

There are individuals who legally possessed, prior to enactment of the 1973 Act, live endangered species and parts or products of endangered species for the purpose of sale or for other activities of a commercial nature. The Endangered Species Act of 1969 prohibited only the importation of species listed as endangered. Sale, interstate transport, export and other activities of a commercial nature were not prohibited. With passage of the 1973 Act such activity became illegal.

Tortoise, spotted cat and reptilian products exist in this country in commercial quantities, and we have some indication of commercial stocks in other endangered species parts or products lawfully acquired prior to the 1973 Act. Regardless of the extent or volume, the individuals in possession of such items should have the same opportunities as those in possession of scrimshaw or whale oil. Indeed, we question the constitutionality of the Subcommittee's amendment discriminating between two different classes of people essentially in the same situation without some rationale for the distinction.

We urge reconsideration of this action by the full Committee. The amendments proposed by the Administration and introduced by you and Congressman Zeferetti on October 20, 1975, would provide equitable treatment to all individuals lawfully possessing for commercial purposes pre-Act live endangered species or parts or products of such species.

We have no objections to the enactment of sections 1, 3 and 4 of the Subcommittee's reported bill. We note that the provisions contained in these sections are either similar or identical to sections (b), (c) and (d) of H.R. 10229 as introduced.

We hope these comments will be of value to you in consideration of this legislation by the full committee.

Sincerely yours,

DOUGLAS P. WHEELER,
Deputy Assistant Secretary for Fish and Wildlife Parks.

DEPARTMENT OF STATE,
Washington, D.C., January 30, 1976.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your communication of October 23, 1975, regarding the views of the Department of State on H.R. 10229, a bill "to amend the Endangered Species Act of 1973." H.R. 10229 would permit certain waivers of the provisions of the Endangered Species Act with regard to endangered species or their parts of products lawfully held on December 28, 1973, provided that such waivers are consistent with U.S. obligations under the Convention on International Trade in Endangered Species of Wild Flora and Fauna (The Convention).

We understand that H.R. 10229 is not intended to alter or supersede any international legal obligations arising under the Convention. In this regard, we note the provisos in proposed subparagraphs 10(b)(4) and (5) that any exemptions granted pursuant to these provisions "shall not violate the Convention." Thus, a transaction otherwise eligible for an exemption under subparagraph 4 or 5 would not be so eligible if it was otherwise prohibited by the Convention. In such a case, if an exemption under Article VII of the Convention was not obtainable, then the provisions of the Convention regulating trade in specimens of that species would govern.

Other aspects of this legislation relate essentially to domsetic matters which are outside the responsibilities of this Department. Accordingly, we defer to the views of other interested agencies regarding the desirability of its adoption.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENDANGERED SPECIES ACT OF 1973

(87 Stat. 884; Public Law 93-205)

* * * * * * *

Sec. 3. For the purposes of this Act—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling[.] *; provided, however, that it does not include exhibition of commodities by museums or similar cultural or historical organizations.*

* * * * * * *

Sec. 4. (a) General.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

* * * * * * *

(f) Regulations.—* * *

(2)(B) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

* * * * * * *

(ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the wellbeing of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of [subsection (b) (A), (B), and (C)] *subsection (b)(1)(A)* of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

* * * * * * *

Sec. 10 * * *

(c) Notice and Review.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this [subsection.] *section.* Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application[.] *; except that such 30-day period may be waived by the Secretary in an emergency situation where the health or life of an* *endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within 10 days following the issuance of the exemption or permit.* Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

* * * * * * *

Sec. 10. (e) * * *

(4) Notwithstanding the provisions of paragraph (1) of this supsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) (1) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 8(a)(1)(E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the 3-year period beginning on the date of issuance of the certificate; and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to ensure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

SEC. 11. (e) * * *

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may *make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be*

arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act[.] , *but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.* Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

* * * * * * *

[From the Congressional Record, Feb. 17, 1976]

HOUSE CONSIDERATION AND PASSAGE OF S. 10229, AS AMENDED

ENDANGERED SPECIES ACT AMENDMENTS

Mrs. SULLIVAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 10229) to amend the Endangered Species Act of 1973, as amended.

The Clerk read as follows:

H.R. 10229

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(f)(2)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)(B)(ii) is amended by striking out "subsection (b) (A), (B), and (C)" and inserting in lieu thereof "subsection (b)(1)(A)."

SEC. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f)(1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

"(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted as adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

"(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.".

SEC. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.".

SEC. 4. Section 11(e)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)(3)) is amended—

(1) by inserting immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: ", but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale of the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.".

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(i)) is amended by striking the period and inserting in lieu thereof ": *Provided, however*, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.".

The SPEAKER pro tempore. Is a second demanded?

Mr. FORSYTHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Missouri (Mrs. Sullivan) and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 20 minutes each.

The Chair recognizes the gentlewoman from Missouri (Mrs. Sullivan).

Mrs. SULLIVAN. Mr. Speaker, H.R. 10229 embodies several amendments to the Endangered Species Act of 1973 which should be expeditiously enacted to assure the effective management of this important act.

The amendments contained in H.R. 10229 were the subject of extended committee consideration and discussion with both the Federal agencies and those affected by the act. This bill would modify and clarify certain troublesome language in the 1973 act and would assist the responsible agencies in enforcing its provisions. Similar conservation legislation, the Marine Mammal Protection Act of 1972, was passed to provide special protection for marine mammals throughout the world by removing the U.S. market for the parts and products of these mammals. This act prohibited the importation and sale in interstate and foreign commerce of such parts and products, although these prohibitions did not apply to marine mammals taken prior to December 21, 1972, the effective date of the act.

The Endangered Species Act of 1973, unlike the Marine Mammal Protection Act, contained no retroactive exemption for the interstate sale of parts and products of endangered marine mammals which were legally held under the 1972 act. This inconsistency has caused considerable trouble in the enforcement of the laws and has created financial hardships for scrimshanders and other artisans who deal in carved whale bone and teeth as well as those who held large inventories of sperm whale oil.

With respect to such whale oil and scrimshaw, H.R. 10229 would remedy this inconsistency between the two acts. It would provide limited but adequate exemptions for the disposal of these items without sacrificing the intent or diminishing the effectiveness of the 1973 Endangered Species Act.

Finally, H.R. 10229 makes several essential changes in the Endangered Species Act to provide for more flexibility in the interpretation of key provisions controlling the promulgation of emergency regulations in cases of where the health or life of endangered species is threatened; the disposal by the Government of species, parts, or products which have been forfeited to the United States; and the enforcement of the act's prohibitions. These technical amendments were recommended and are supported by the administration in order to remedy a number of problems which have emerged over the past several years in the course of administering the provisions of the act.

I urge the support of all Members to enact H.R. 10229.

Mr. Leggett. Mr. Speaker, as chairman of the subcommittee that heard this matter, I rise in support of H.R. 10229. This bill is essential to the equitable and effective management of the Endangered Species Act of 1973.

The phrase "extinct is forever" emphasizes the unique and serious nature of the problem facing the world's endangered species. Unlike some problems which can be remedied after a mistake is made, the extinction of a species is irreversible. The occurrence of such a loss is not merely aesthetic, but educational, scientific, economic, and perhaps even ethical.

Between the years 1600 and 1850, only five domestic species became extinct. By contrast, 57 such species became extinct since 1850. At present, the estimated annual rate of animal extinction is between one and two species. This fact led to the enactment of a series of laws to protect the welfare of endangered species. The most recent legislation was the Endangered Species Act of 1973.

I would like to explain the significance and effect of the Endangered Species Act amendments contained in H.R. 10229. The 1973 act strengthened its 1969 predecessor by prohibiting not only the importation but also the sale of endangered species and their parts or products in interstate and foreign commerce. In addition, it provided for the establishment of specified comment periods for the issuance of new regulations affecting the determination of management of endangered species.

These new provisions along with others created a strong and a nearly unheralded law for the protection of such species. As the provisions of the 1973 act have been implemented by the agencies and applied to existing conditions, certain ambiguities and incidental problems have surfaced which now require our legislative attention. H.R. 10229 is designed to address these perturbations and clarify the act.

The first amendment contained in H.R. 10229 relates to the situation where an emergency condition poses a significant risk to the wellbeing of an endangered species of fish or wildlife. Under the existing act, if the jeopardized species is a resident species, the Secretary of Interior cannot issue emergency regulations until: First, notice is published in the Federal Register; second, notification of the contemplated action is given to the Governor of each State within which such species is then known to exist; third, 90 days is allowed after notification for each such State to submit its comments and recommendations, unless such period is otherwise shortened by agreement between the parties; and fourth, a summary of all such comments and recommendations received by the Secretary is published in the Federal Register. This procedure albeit worthwhile in the ordinary course of business, is inappropriate and cumbersome in an emergency situation which demands prompt action. Therefore, the first amendment would relieve the Secretary from waiting the required 90 days for comments and recommendations and the publication of a summary in the Federal Register for resident species in those instances where an emergency exists. However, this amendment leaves untouched the procedural safeguard that limits the force and effect of any such emergency regulations to 120 days unless, within the 120 days, the exempted 90-day comment period and required publications are complied with.

The second amendment in H.R. 10229 would allow a limited exemption to the prohibitions contained in the Endangered Species Act for certain endangered species parts or products which were legally obtained and held in the United States prior to its enactment on December 28, 1973. These exemptions apply only to sperm whale oil and to scrimshaw which is defined as the art form involving the carving or etching and engraving of designs upon the bone and teeth of marine mammals of the order Cetecea—Cē ta′ shēē a. As referred to earlier, the passage of the 1973 act, without the retroactive exemption similar to the one contained in the Marine Mammal Protection Act of 1972, caused severe economic hardship to those who heretofore could sell such pre-act endangered marine mammals parts or products in interstate or foreign commerce.

This amendment allows such exemptions, that is, the sale in interstate and foreign commerce or exportation so long as it does not violate the Convention on International Trade in Endangered Species of Wild Flora or Fauna. However, it also prescribes certain procedures and conditions which must be followed.

Any person seeking an exemption must make application to the Secretary before the close of the one 1-year period beginning on the date on which regulations promulgated by the Secretary first take effect: such application must contain a complete and detailed inventory of all preact endangered species parts for which the applicant seeks exemptions and must be accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a preact endangered species part is in fact such a part.

Further, if the Secretary approves such an application, any certificate of exemption issued must detail the prohibition exempted, the preact endangered species parts to which the exemption applies, and the time period for such exemption which may in no case be longer than 3 years from the time of certification.

Finally, the Secretary shall prescribe such regulations as he deems necessary, including, but not limited to, terms and conditions which may be imposed on applicants for exemptions; requirements that applicants register inventories, keep complete sales records permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary. Further, terms and conditions may be imposed on any subsequent purchase of any preact endangered species part covered by any exemption granted to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this act.

I might note parenthetically that these conditions are more stringent than those set by the other body when it passed a similar amendment to the Endangered Species Act—S. 229—for a scrimshaw exemption.

The last subsection of this amendment provides an affirmative defense in connection with any action alleging a violation of the prohibition contained in section 9 of the act. In such a case, any person claiming the benefit of any exemption or permit has the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation—similar provisions are found in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 885(b)) and in the act prohibiting foreign fishing vessels in the territorial waters of the United States.

Section 3(1) of H.R. 10229 is a technical amendment which clarifies the intent of the notice and review requirements to apply to all applications for an exemption or permit.

Section 3(2) of H.R. 10229 also applies to emergency situations, as discussed earlier where the health or life of an endangered species is threatened.

Under the existing provision, the Secretary must publish notice in the Federal Register of each application for an exemption or permit allowing 30 days for comments. The amendment would permit the Secretary to waive the 30-day comment period in emergency situations where no reasonable alternative is available to the applicant.

If the Secretary should waive the 30-day comment period, he must publish notice of such waiver within 10 days following the issuance of any emergency exemption or permit. It should be noted that this emergency waiver is not intended for the mere convenience of an applicant, or even to avoid serious economic loss.

Section 4(1) of H.R. 10229 amends the act to permit duly authorized enforcement agents to make arrests without a warrant if the agent has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view. Similar authority is found in other wildlife legislation, for example, Marine Mammal Protection Act of 1972 (16 U.S.C. § 1377(c)); Protection of Bald and Golden Eagles Act (16 U.S.C. § 668b.(a)); Administration of National Wildlife Refuge System Act (16 U.S.C. § 68dd(f)); and the Migratory Bird Treaty Act (16 U.S.C. 106). Moreover, it is traditional law enforcement authority and is necessary in the proper enforcement of this act with its broad scope of prohibition.

Section 4(2) also amends the enforcement section of the Endangered Species Act to authorize the disposal of endangered species, parts or products which have been forfeited to and stored by the Government. The manner of such disposal must be consistent with the purposes of the act. In that regard, the committee felt that disposal by public sale to the general public would tend to perpetrate the market and desire for such items, thus increasing the likelihood of contraband.

Last, section 5 of the bill deals with the problem of museums and similar cultural and historical organizations to exchange displays of endangered species, parts or products across State line for exhibition without violating the act. Interstate transfers are only prohibited if they are in the course of a commercial activity. Inasmuch as the definition of the term "commercial activity" in the act is broad and not all together precise, this amendment would clarify its meaning to specifically exclude the exhibition of commodities by museum and the like from its definition.

I would like to add one important point of clarification with respect to this definitional amendment. Recently, the Department of the Interior, by administrative regulation on September 26, 1975, further defined the term "industry and trade" as it is used in the act's definition of the term "commercial activity." The new DOI definition narrows the scope of those activities which are prohibited by the act, that is, activities which involve "the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit." This definition is broader than our amendment in the sense that it would probably permit other persons or institutions to make nonprofit transfers. However, our amendment was necessary because the Department of Commerce has not adopted the same definitions as the Department of the Interior. The amendment in H.R. 10229 is not intended to limit the Department of the Interior's definition.

Mr. FORSYTHE. Mr. Speaker, when the Endangered Species Act of 1973 was passed, many persons, including the U.S. Government, found themselves holding inventories of endangered species parts and products which suddenly they could not dispose of. Particularly hard-hit were American scrimshanders who were selling between 85 percent and 95 percent of their uniquely American art form in interstate commerce. H.R. 10229 recognizes the economic plight of these individuals by permitting them to dispose of their legally acquired stocks.

H.R. 10229 also recognizes that GSA is spending approximately $38,500 per year to maintain a sperm oil stockpile which the Intergovernmental Materials Advisory Committee has declared to be surplus to the Nation's needs. If GSA could dispose of this oil, the taxpayers would be spared unnecessary storage costs and would realize a gain of

$2.7 million from the sale. If enacted, H.R. 10229 would spare the taxpayers another unnecessary storage cost by authorizing the disposal of endangered species parts and products which have been forfeited to and stored by the Government. Without these amendments, the Government lacks the authority to dispose of the forfeited items.

H.R. 10229, however, makes other important and necessary changes in the Endangered Species Act. It is, as has been pointed out, incongruous to promulgate emergency regulations and then have to wait 90 days to implement them. It is also less than logical to require a 30-day comment period before granting an emergency permit for the treatment of a stranded or beached endangered species. Yet, technically, this is what the act now requires.

Mr. Speaker, H.R. 10229 is a simple and straight-forward bill which rights an economic wrong, saves the taxpayers money, and makes administration of an important statute easier.

Mr. Mosher. Mr. Speaker, I strongly support H.R. 10229, a bill to authorize amendment of the Endangered Species Act, to permit interstate commerce in sperm oil and scrimshaw products lawfully acquired prior to enactment of ESA.

I greatly appreciate the intelligent, sensitive, responsible way that this legislation has been perfected in the Merchant Marine Committee, thanks to the bipartisan leadership of our colleagues, Messrs. Leggett and Forsythe, and the cooperation of the chairlady from Missouri (Mrs. Sullivan).

Just a year ago, I introduced legislation—H.R. 3465—to authorize disposition by the Federal Government of certain sperm whale oil held in the national strategic stockpile.

This particular oil, most of which is now a quarter of a century old, was placed in storage by the Government after World War II because of its "strategic and critical" properties as a lubricant. However, in the course of the years, adequate substitutes have been developed for all essential uses of this oil, and 3 years ago the Government oil was declared surplus.

Consequently the General Services Administration entered into contracts during 1973 for the sale of the stockpiled oil for a total of approximately $7.5 million. As the first deliveries were being made to private companies the Endangered Species Act became effective. Its stringent technical provisions prohibited the sale or shipment of products derived from animals on the endangered species list blocked GSA from fulfilling its contracts. Since that time, this legal snafu has caused the bulk of the stockpiled oil to remain in storage—at a cost of more than $3,000 per month—and of no use to anyone.

As a strong supported of the Endangered Species Act, indeed, as one of its original cosponsors, I have no intention to weaken or dilute that important and valuable law.

My bill—H.R. 3465—was really a very simple one. What I hoped to accomplish was threefold; to save the American taxpayers an appreciable amount of money, to add revenue for the Federal Treasury, and to allow the Government to fulfill its contractual obligations.

In recent years commercial users of sperm whale oil are, one by one, switching irreversibly to using sperm oil substitutes instead of the genuine substance. As the oil's value continues to decline—as a result of diminishing demand—the Government continues to charge itself—and therefore the taxpayers—$38,500 annually for storage costs when it could bring an additional $3 million—the estimated value of the unsold oil—into the Treasury and inject almost $7 million into the private sector upon processing.

These are impressive figures, especially as we once again enter into the maze of the budgetary process. It certainly was not the intention of the Congress to create this tieup of the Government-held supply of 25-year-old sperm oil.

The question of privately stockpiled scrimshaw prohibited from interstate commerce arose as a related issue. Thus, during the thorough hearings by the Merchant Marine Committee's Subcommittee on Fisheries and Wildlife, the members indicated their desire to also address that issue as well as that of privately held sperm whale oil—amounting to some 8 million pounds. The committee chose to add these provisions to the clean bill that is before us today.

I hasten to note that while this bill does provide for the sale of publicly held sperm oil, it contains very stringent safeguards to assure that disposition of this oil is such that there is virtually no likelihood that this whale oil may become a commodity to be used in illicit trade or for export. Any fears of this nature are unwarranted.

Obviously, the intent of this bill does not contemplate killing more whales. It is bad enough that so many whales were killed more than two decades ago to obtain this oil. I do not see the sense in aggravating this situation now by continuing the impoundment of this oil from the sperm whales that have been dead for so many years.

There is an extremely limited, finite supply of this oil available for industrial use. The users realize this; in fact, a good many former users have indicated that they are irrevocably out of the sperm oil market. Once this supply is exhausted the users will turn to substitutes that are or will be available on the market.

My use of the future tense here reflects a very fortunate and documented scientific discovery in the Southwestern United States. The seed oil of the jojoba bush, an obscure and peculiar desert plant, has a remarkable chemical similarity to sperm whale oil and it is anticipated that upon processing the jojoba bean oil could be used as a sperm oil substitute for the complete range of uses.

However, it is time-consuming and expensive to harvest the wild beans, so plans call for jojoba bean plantations on certain Indian reservations in Arizona and California. A minimum 5-year lag is anticipated before the jojoba bean oil will be available on the commercial market. It is expected that the finite supply of sperm whale oil will be just about exhausted by then. This bill provides for the interim period. The oil will be generally available for this short time only and then it will be gone.

H.R. 10229 is an extremely practical measure. It signals the end of one type of industry and the transition to another, far more socially desirable industry.

Mr. Speaker, I know from my own research that it is necessary and beneficial for us to amend the Endangered Species Act to permit the sale of the surplus sperm whale oil held by the General Administration. And I trust the judgment of my fellow committee members that it is equally desirable to permit the sale of other sperm whale oil and scrimshaw that was properly acquired before the ESA was enacted. Thus, I support passage of H.R. 10229.

Mrs. SULLIVAN. Mr. Speaker, we have no further requests for time.

The SPEAKER pro tempore (Mr. McFall). The question is on the motion offered by the gentlewoman from Missouri (Mrs. Sullivan) that the House suspend the rules and pass the bill H.R. 10299, as amended.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

A motion to reconsider was laid on the table.

[From the Congressional Record, Feb. 17, 1976]

HOUSE CONSIDERATION AND PASSAGE OF S. 229, AS AMENDED IN LIEU OF H.R. 10229

Mrs. SULLIVAN. Mr. Speaker, I ask unanimous consent that the Committee on Merchant Marine and Fisheries be discharged from further consideration of the Senate bill (S. 229) to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Missouri?

There was no objection.

The Clerk read the Senate bill as follows:

S. 229

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

SEC. 2. (a) The Congress finds and declares that—

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this part of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea.".

SEC. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (b)) is amended by adding at the end thereof the following two new paragraphs:

"(4)(A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a)(1) of this Act—

"(i) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(ii) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, if such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than seven years after the date of enactment of this provision.

As used in this paragraph, the term "lawfully" refers to the laws of the United States and to laws of the several States and political subdivisions thereof. Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

"(B) Any person who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(i) submit to such Secretary, within one hundred and twenty days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

"(ii) apply to such Secretary for such exemption, in such form and manner and with such submission as such Secretary shall prescribe; and

"(iii) submit to such Secretary sales records, reports, and other documents and materials, to the extent reasonably necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with the subparagraph (A).

"(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be effective on the date of final publication, notwithstanding any other provision of this Act.

"(5) Within one hundred and twenty days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an interagency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (4) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within twelve months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations.".

MOTION OFFERED BY MRS. SULLIVAN

Mrs. **Sullivan**. Mr. Speaker, I offer a motion.

Mrs. Sullivan moves to strike out all after the enacting clause of S. 299 and to insert in lieu thereof the provisions of H.R. 10229, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, and was read the third time, and passed.

The title was amended so as to read: "A bill to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 10229) was laid on the table.

[From the Congressional Record, June 29, 1976]

House Concurrence in Senate Amendments to House Amendments to S. 229

Endangered Species Act of 1973 Amendments

Mr. **Leggett**. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 229) to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes, with Senate amendments to the House amendments thereto, and concur in the Senate amendments to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendments to the House amendments, as follows:

Page 1, line 12, of the House engrossed amendment, after "oil" insert:, "including derivatives thereof,".

Page 4, after line 21 of the House engrossed amendment, insert:

"(6) (A) Any contract for the sale of pre-Act Endangered Species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under subsection 9(a) (1) (F).

"(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exonerate any person from any act committed in violation of paragraphs (1) (A), (1) (E), or (1) (F) of section 9(a) prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act.".

The **Speaker**. Is there objection to the request of the gentleman from California?

Mr. **Rousselot**. Mr. Speaker, reserving the right to object, will the gentleman explain what this does?

Mr. **Leggett**. If the gentleman will yield, yes. The legislation very simply clarifies the term "sperm whale oil" by adding "including derivatives thereof" to the bill as it was passed by the House.

Second, it keeps in force and effect the GSA contracts and advises that any enforcement activities heretofore taking place will continue.

Mr. Rousselot. Mr. Speaker, further reserving the right to object, is there anything added by the Senate amendments?

Mr. Leggett. There is nothing added. We have the Senate amendments to the House amendments to the Senate bill, but the amendments are as I have just stated.

Mr. Rousselot. Mr. Speaker, I thank the gentleman.

I withdraw my reservation of objecton.

Mr. Leggett. Mr. Speaker, the House passed S. 229 on February 17, 1976, to amend the Endangered Species Act of 1973 to allow the limited disposal of preact, legally obtained endangered species parts and products. In addition, the House further amended S. 229 to include a number of minor technical changes to clarify certain ambiguities, to avoid lapses of coverage, and unnecessary administrative burdens in the original legislation.

As the Senate originally passed S. 229 on April 14, 1975, the bill only allowed certain exemptions for a limited period of time for the sale of finished scrimshaw products in interstate commerce. The House expanded the limited exemptions to include sperm whale oil as well as scrimshaw products and raw stocks normally held prior to December 28, 1973. The House amendments also included technical changes in the Endangered Species Act to:

First. Provide an affirmative defense for prima facie violations of section 9;

Second. Clarify the notice of review of permit of appllications provisions;

Third. Clarify the 30-day comment period preceding permit issuances;

Fourth. Strengthen and clarify the enforcement provision;

Fifth. Authorize the disposal of forfeited or confiscated endangered species parts or products; and

Sixth. Clarify the definition of "commercial activity."

After S. 229 was amended by the House and returned to the Senate, the Senate acted on June 24, 1976, by accepting the House amendments with three additional clarifying amendments as follows:

First. The first amendment clarified the term "sperm whale oil" by adding "including derivatives thereof" to cover such derivatives as spermacetti which is used by pharmaceutical companies as an ingredient in lotions, cosmetics, and the like.

Second. The second amendment responds to a request by the General Services Administration that the validity of the contracts entered into by GSA with private companies for the disposal of the Nation's stockpile of sperm whale oil be made clear.

Third. The third amendment is to resolve any uncertainty regarding previous enforcement actions or ongoing investigations. The amendment simply states that nothing in S. 229 shall be construed to: First, exonerate any person for any act committed, prior to the dates of the enactment of S. 229, in violation of the provisions for which exemptions are being granted; or second, to immunize any person from prosecution for any such act. Each of these additional clarifying amendments are consistent with the intent of the House when it originally acted upon S. 229 back in February of this year.

Because of the concerns of companies dealing in sperm whale oil and derivatives thereto, the Senate's first clarifying amendment adding "including derivatives thereto" helps define the scope of this bill. The second amendment by the Senate regarding the General Services Administration's contract concerning approximately 23,400,000 pounds of stockpiled sperm whale oil is necessary to assure that these contracts will be performed by the parties as contemplated.

And, finally, on account of several enforcement actions and ongoing investigations, we agree with the additional Senate language which clarifies the scope of limiting exemptions contained in S. 229. The House never intended in S. 229 to exonerate any person for any act committed prior to the enactment of S. 229 in violation of the provisions for which exemptions are being granted or to immunize any person from prosecution for any such act.

For these reasons, Mr. Speaker, I urge the House to concur in the Senate amendments to the House amendments on S. 229.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

Calendar No. 57

94th CONGRESS
1st Session

S. 229

[Report No. 94-63]

IN THE SENATE OF THE UNITED STATES

January 17, 1975

Mr. Kennedy (for himself and Mr. Brooke) introduced the following bill; which was read twice and referred to the Committee on Commerce

April 4, 1975

Reported, under authority of the order of the Senate of March 26, 1975, by Mr. Magnuson, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That section 10(h) of the Endangered Species Act of 1973 (87 Stat. 896; 16 U.S.C. 1539) is amended by adding at the end thereof a new subparagraph (4) to read as follows:~~

~~"(4) The Secretary of Commerce may grant, under such terms and conditions as he may prescribe (including, but not limited to, registration of inventories, keeping of~~

~~complete sales records, provision for duly authorized agents of the Secretary of Commerce to have the right to inspect inventories and records, and filing of such reports as the Secretary of Commerce may require), exemptions to the prohibitions in clauses (E) and (F) of section 9(a)(1) of this Act to persons for stocks or inventories of bone and teeth of marine mammals of the order Cetacea, including parts or products thereof, lawfully held within the United States on December 21, 1972. Subsequent purchasers of bone and teeth of marine mammals of the order Cetacea, including parts or products thereof, originally sold by a person granted an exemption pursuant to this paragraph shall be entitled to the same exemption. In connection with any action brought for a violation of the provisions of section 9(a) of the Act, there shall be a rebuttable presumption that the exemption provided for in this paragraph does not apply, and any person claiming the benefit of any such exemption shall have the burden of overcoming such presumption. Notwithstanding the provisions of section 4(f)(2)(A), regulations published by the Secretary of Commerce in connection with this exemption shall be effective on the date of publication."~~

That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

SEC. 2. (a) The Congress finds and declares that—

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this part of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon,

or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea.".

SEC. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539(b)) is amended by adding at the end thereof the following two new paragraphs:

"(4)(A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a)(1) of this Act—

"(i) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(ii) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, except that no such exemption shall be granted or remain in effect more than seven years after the date of enactment of this provision.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized *agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.*

"(B) Any person who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(i) submit to such Secretary, within one hundred and twenty days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

"(ii) apply to such Secretary for such exemption, in such form and manner and with such submissions as such Secretary shall prescribe; and

"(iii) submit to such Secretary sales records, reports, and other documents and materials, to the extent necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with the subparagraph (A).

"(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision

of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be effective on the date of final publication, notwithstanding any other provision of this Act.

"(5) Within one hundred and twenty days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an interagency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (4) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within twelve months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with

respect to the effectiveness of this task force in preventing such violations.".

Amend the title so as to read: "A bill to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes."

Calendar No. 57

94TH CONGRESS } SENATE { REPORT
1st Session } { No. 94–63

SCRIMSHAW ART PRESERVATION ACT OF 1975

APRIL 4, 1975.—Ordered to be printed

Filed under authority of the order of the Senate of March 26, 1975

Mr. MAGNUSON, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 229]

The Committee on Commerce, to which was referred the bill (S. 229) to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972, having considered the same, reports favorably thereon with a title amendment and an amendment in the nature of a substitute to the text of the bill and recommends that the bill as amended do pass.

PURPOSE

S. 229 is designed to preserve the art of scrimshaw, which originated during the nation's early years by New England whalers who etched designs in, and carved figures from whale bone and teeth as a means of passing the time during the long months spent away from home on whaling expeditions. As the nation grew and expanded westward, the popularity of scrimsaw grew as well, and today the art is practiced throughout the country, in areas such as the Pacific Northwest, the Southwest, Alaska and Hawaii. Today's artisans, in addition to practicing scrimshaw as it was originated in New England, have adapted the art and developed new innovations which reflect the heritage of other sections of the nation in addition to that of New England and which are not restricted to nautical motifs.

Due to the prohibitions of the Endangered Species Act of 1973, artisans are now prohibited from selling their finished scrimshaw products in interstate commerce. While other media, such as beef bone, could be legally utilized, most artisans have not had sufficient time to adapt their craft to other material. Thus, in order to assure the preservation of this art form, S. 229 permits the Secretary of Commerce, who administers the Endangered Species Act with respect to whales, to grant exemptions for a limited period of time for the sale of finished scrimshaw products in interstate commerce. This legislation would permit scrimshanders sufficient time to both dispose of their present inventories and to adapt their art to a new medium, without encouraging an endless trade in products of endangered species.

BACKGROUND AND NEED

The Marine Mammal Protection Act, which was passed by the Congress on October 21, 1972, was designed to prevent the further slaughter and depletion of marine mammals throughout the world by removing the United States' market for the parts and products of these mammals. The Act prohibited the importation and sale in interstate and foreign commerce of such parts and products, although these prohibitions did not apply to marine mammals taken prior to December 21, 1972, the effective date of the Act.

In 1973 Congress passed the endangered Species Act of 1973, which strengthened its 1969 predecessor by prohibiting not only the importation, but also the sale, of endangered species and their parts and products in interstate and foreign commerce. Unlike the Marine Mammal Act, however, the Endangered Species Act contains no retroactive exemptions for the interstate sale of parts and products of endangered marine mammals which were legally held under the 1972 Act. This inconsistency has resulted in a great deal of confusion in the enforcement of the laws and has created financial hardship for scrimshanders and other artisans who deal in carved whale bone and teeth. These individuals possess substantial inventories of legally acquired whale bone and teeth used in their craft but are prohibited from marketing their finished products under the 1973 Act. Since exemptions for the sale of these art objects cannot be granted administratively, legislation is needed to rectify the situation.

LEGISLATIVE HISTORY

During the 93d Congress, S. 3751 was introduced in the Senate on July 11, 1974 by Senator Edward M. Kennedy (D–Mass.) and Senator Edward R. Brooke (R–Mass.) and was referred to the Senate Commerce Committee on July 19. A revised bill, S. 4128 which was more limited in scope than S. 3751, was introduced by the same sponsors on October 10, 1974 and referred to the Senate Commerce Committee on October 19. No further action occurred with respect to either bill during the 93d Congress.

On January 17, 1975 Senators Kennedy and Brooke introduced S. 229, which was identical to S. 4128 of the 93d Congress. The bill was referred to the Senate Commerce Committee on January 17, 1975. After a comment period during which the public was asked to express its views on the bill, the Senate Commerce Committee reported an amendment to S. 229 in the form of a substitute bill. Following are the major new provisions in the amendment:

Delineation of Congressional Intent.—The amended version of S. 229 sets forth more clearly the intent of Congress in enacting the legislation—that is, to preserve the native American art of scrimshaw but not to promote or perpetuate the trade in products of endangered species. The Committee views this legislation as providing a transition period during which scrimshanders may sustain themselves through the marketing of their finished products in interstate commerce, while at the same time adapt their art to other media which are legal for interstate sale.

Limited Exemption Period.—Under the amended version of the bill, the Secretary of Commerce may grant for two years after the effective date of the Act exemptions for the wholesale sale and shipment in interstate commerce of finished scrimshaw products and for a period of seven years after the effective date exemptions for retail sale for personal use of finished scrimshaw products. The designation of a time during which exemptions may be granted is preferable to the open ended provisions of the original bill which might have encouraged smuggling of endangered species in the future when a market for scrimshaw products would still exist, but legally acquired stocks would have been depleted.

Reporting Procedures.—The amendment reported by the Committee sets forth specific reporting procedures which must be met by any individual seeking such an exemption. Among those requirements are the submission to the Secretary of Commerce within 120 days of the effective date of the amendment of a complete and detailed inventory of all holdings of whale bone and teeth. The Secretary may grant exemptions only for holdings thus reported.

In addition, any individual applying for an exemption must submit to the Secretary all available sales records, reports and other documents to show that the holdings for which the exemption is being sought were legally acquired. While the bill itself contains no penalties for the submission of falsified records, it should be noted that federal law (18 USC 1001) prohibits the submission of falsified documents and data in any matter within the jurisdiction of any department or agency of the United States. Violation of such prohibition is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

It should also be made clear that in order for stocks of whale teeth and bone to have been legally acquired prior to December 21, 1972, it is not enough that these materials were purchased prior to that date. Rather, they must have been imported prior to the date when the subject whale was placed on the Endangered Species List pursuant to the Endangered Species Act of 1969.

Special Task Force.—In order to guard against violations of the Act, particularly with respect to smuggling, that may be encouraged by the granting of exemptions under this amendment, the Secretaries of Commerce, Interior and Treasury are directed to create a special task force to provide an intensive enforcement effort with respect to whale bone and teeth. The efforts of this task force are to be concentrated in those areas of the country which are most likely to be susceptible to violations of the Act as a result of the exemptions granted.

The Committee expects this task force to constitute a genuine effort on the part of the agencies involved to seek out and punish violators of the Act.

In their formal comments on the bill, the Departments of Commerce and Interior have recommended broadening the scope of the exemptions authorized under the Act. The Committee has taken no position on the merits of these proposals, but it feels that any additional exemptions should first be closely examined in public hearings and that it would be inappropriate to include them in these amendments, until a complete record has been developed showing that the same or similar narrow purposes would be served by further exemptions.

TEXT OF S. 229, AS REPORTED: To amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

SEC. 2. (a) The Congress finds and declares that—

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this art of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea.".

SEC. 4. Section 10(b) of the Engandered Species Act of 1973 (16 U.S.C. 1539(b)) is amended by adding at the end thereof the following two new paragraphs:

"(4)(A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a)(1) of this Act—

"(i) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(ii) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, except that no such exemption shall be granted or remain in effect more than seven years after the date of enacement of this provision.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

"(B) Any persons who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(i) submit to such Secretary, within 120 days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order of Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

"(ii) apply to such Secretary for such exemption, in such form and manner and with such submissions as such Secretary shall prescribe; and

"(iii) submit to such Secretary sales records, reports, and other documents and materials, to the extent necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with subparagraph (A).

"(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be in effect on the date of final publication, nothwithstanding any other provision of this Act.

"(5) Within 120 days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an inter-agency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (4) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within 12 months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations.".

SECTION BY SECTION ANALYSIS

Section 2.

This section declares the findings of Congress in enacting the legislation, namely, that in preparation for the Nation's bicentennial, every effort should be made to preserve all forms of art and cultures which reflect the nation's heritage. Among those art forms to be preserved is scrimshaw.

Section 3.

This section defines the term "scrimshaw".

Section 4.

This section amends section 10(b) of the Endangered Species Act of 1973 by adding two new paragraphs (4) and (5) at the end thereof.

Subparagraph (4)(a) permits the Secretary of Commerce to grant, under such conditions as he may prescribe, exemptions to the Endangered Species Act of 1973 for the sale in interstate commerce of finished scrimshaw products. These exemptions may be granted for 2 years from the effective date of the bill for the wholesale sale and shipment of finished scrimshaw and for 7 years after the effective date for the retail sale for personal use of finished scrimshaw.

Subparagraph (B) sets down certain reporting requirements which must be met by any person seeking such an exemption.

Subparagraph (C) creates a rebuttable presumption that in connection with any action brought for violation of the Act, the exemption provided for in section 4 does not exist.

Paragraph (5) directs the Secretaries of Commerce, Interior, and Treasury to create a special task force for intensive enforcement of these amendments. The efforts of this task force are to be concentrated in those areas of the country which may be susceptible to violations of the Act as a result of the exemptions granted.

COST ESTIMATE

In accordance with Section 252 of the Legislative Reorganization Act of 1970, the committee estimates that there would be no significant additional cost to the Federal Government if the proposed legislation were enacted.

CHANGES IN EXISTING LAW

There would be no change in existing law if the legislation were enacted.

AGENCY COMMENTS

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 24, 1975.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on S. 229, a bill "To amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972."

S. 229 would authorize the Secretary of Commerce to grant exemptions from the prohibitions of section 9(a)(1)(E) and (F) of the Endangered Species Act of 1973 to persons who lawfully held inventories of bone, teeth, or other parts or products of marine mammals of the order Cetacea prior to the effective date of the Marine Mammal Act of 1972. Exemptions thus granted would run with the article and apply to subsequent purchasers. In every action brought for a violation of the Endangered Species Act of 1973, there would be a rebuttable presumption that the exemption does not apply. Any person claiming the exemption in such a proceeding would have to bear the burden of establishing his right to it. The Secretary of Commerce could prescribe terms and conditions for the granting of an exemption, and any regulations published by the Secretary in connection with the exemption would be effective on the date of publication.

While we agree in principle with the proposed amendment, there are a number of other problem areas which have developed in the administration of the Act by this Department. We testified before the 93d Congress in regard to these. The Fish and Wildlife Service is currently studying the need for amendments to the Act, which would address these other problems. Since the Secretary of Commerce is responsible for administering the Endangered Species Act insofar as it relates to marine mammals of the order Cetacea, we defer to the views of the Commerce Department as to the need and availability of this particular bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

DOUGLAS P. WHEELER,
Acting Assistant Secretary of the Interior.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., March 20, 1975.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department with respect to S. 229, a bill to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protection Act of 1972.

S. 229 would amend Section 10(b) of the Endangered Species Act of 1973 (87 Stat. 896; 16 U.S.C. 1539) by adding a new subsection (4) to exempt from the prohibited acts identified in clauses (E) and (F) of Section 9(a)(1) of the Act stocks or inventories of bone and teeth of marine mammals of the order Cetacea, including parts or products thereof, lawfully held within the United States on December 21, 1972.

The "grandfather clause", section 9(b) of the Endangered Species Act, now prohibits certain commercial activities with respect to endangered species held in the course of a commercial activity on the effective date of the Act. This prohibition has resulted in the inability of certain businesses to utilize existing endangered species or parts thereof legally held at the time the Act became effective.

The Department recognizes the injustice of the present situation with respect to those businesses affected and supports the intent of this legislation. However, we feel that S. 229 will only paritally correct the problem by reason of its limited scope. We suggest that the bill be expanded to include all parts and products of marine mammals of the order Cetacea to alleviate the hardship caused various businesses which are unable to trade in interstate commerce any endangered species, or parts thereof, which were legally acquired and being held at the time the Act became effective. The objective of the Endangered Species Act is to prevent the taking of endangered species of fish and wildlife and to restrict trade that would lead to the killing of additional animals. The Department feels the amendment we are suggesting would insure both our commitment to the moratorium on taking additional animals and also our concern for the businessman.

We would like to have S. 229 amended further to ease the administrative burden of proving that the parts or products were acquired prior to the effective date of the Act. With regard to parts and products from those species under the jurisditcion of this Department, we believe that the ability of the Secretary to adequately enforce the Act as amended by S. 229 would be enhanced by modifying subsection 9(d)(2) to read as follows (brackets deleted; italic language added):

"(2) Any person required to obtain permission under paragraph (1) of this subsection *and any person who sells or offers for sale in interstate commerce any fish or wildlife listed pursuant to section 4 of this Act shall*—

"(A) keep such records as will fully and correctly disclose each portation or [exportation] *other acquisition* of fish, wildlife, or plants made by him and the subsequent *exportation, sale, or other* disposition made by him with respect to such fish, wildlife, or plants;

"(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of [imported] fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

"(C) file such reports as the Secretary may require."

We take no position with respect to any problems which this amendment may raise with respect to species under the jurisdiction of the Department of the Interior.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

—— ——,
General Counsel.

[From the Congressional Record, April 14, 1975]

Senate Consideration and Passage S. 229, As Amended

Scrimshaw Art Preservation Act of 1975

Mr. Moss. Mr. President, I ask unanimous consent that we turn to Calendar No. 57, and proceed with that matter now, on which there is a unanimous-consent agreement.

Mr. William L. Scott. Mr. President, reserving the right to object, has the distinguished Senator's request been cleared with this side of the aisle?

Mr. Moss. It has been cleared with both sides of the aisle. The Senator from Alaska——

The Acting President pro tempore. Under the previous order, the Senate had already agreed to proceed to the consideration of S. 229.

Mr. Moss. That is correct.

The Acting President pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 229) to amend the Endangered Species Act of 1973 to make it more consistent with the Marine Mammal Protective Act of 1972.

The Acting President pro tempore. Time for debate on this bill is limited to 1 hour to be equally divided and controlled by the majority and minority leaders or their designees, with 30 minutes on any amendment, and 20 minutes on any debatable motions or appeals.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

Sec. 2. (a) The Congress finds and declares that—

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others, it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of the part of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Sec. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or design from, the bones and teeth of marine mammals of the order Cetacea.".

Sec. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (b)) is amended by adding at the end thereof the following two new paragraphs:

"(4) (A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a)(1) of this Act—

"(i) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and "(ii) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, except that no such exemption shall be granted or remain in effect more than seven years after the date of enactment of this provision.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

"(B) Any person who wants an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(i) submit to such Secretary, within one hundred and twenty days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holdings reported in such inventories;

"(ii) apply to such Secretary for such exemption, in such form and manner and with such submisisons as such Secretary shall prescribe; and

"(iii) submit to such Secretary sales records, reports, and other documents and materials, to the extent necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with the subparagraph (A).

"(C) There shall be a rebuttal presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be effective on the date of final publication, notwithstanding any other provision of this Act.

"(5) Within one hundred and twenty days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an interagency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (4) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within twelve months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations.".

Mr. Moss. Mr. President, I ask unanimous consent that the amendment to S. 229 of the Committee on Commerce be considered as original text for the purpose of further amendment.

The Acting President pro tempore. Without objection, it is so ordered.

Mr. Moss. Scrimshaw is a unique American artform which was developed during the Nation's early years by New England whalers, who during the long months at sea took up carving designs on whale bone and teeth. As the Nation grew, so did the popularity of scrimshaw, and today the art is practiced by scrimshanders throughout the country. Perhaps the country's most famous collection of scrimshaw pieces was owned by President John F. Kennedy.

In recent years, however, the whale has been placed on the endangered species list, and scrimshaw itself has become endangered. Due to the prohibitions of the Endangered Species Act of 1973, scrimshanders and small businessmen are prevented from sustaining themselves and their art through the marketing of their products in interstate commerce. Unlike the Marine Mammal Protection Act of 1972, which extends protection only to whales taken after its date of enactment, the Endangered Species Act of 1973 prohibits the sale or movement in interstate commerce of products made from whale bone and teeth, even if they were legally acquired prior to December 21, 1972, the effective date of the Marine Mammal Act. S. 229 would conform the Endangered Species Act to the Marine Mammal Protection Act to alleviate the hardship that has been placed on artisans and small businessmen. By permitting the Secretary of Commerce to grant limited exemptions for a period of 7 years for the sale and movement in interstate commerce of legally acquired scrimshaw products made from legally acquired whale bone and teeth, the inequities should be avoided.

In order to guard against increased smuggling or other violations of the act which may result from the granting of these exemptions, any person seeking an exemption must supply the Secretary with any documents needed to prove that the holdings in question were legally acquired. In addition, the Secretaries of Interior, Commerce, and the Treasury are instructed to create a special task force to guard against smuggling that may occur as a result of these exemptions. The efforts of the task force are to be supplemented to existing enforcement activities.

Mr. President, in my view S. 229 will help to ensure the survival of the art of scrimshaw by giving artisans sufficient time to dispose of their inventories of whale ivory while adapting their art to other media, such as beef bone, which is legal for trade. This goal will be achieved without encouraging an endless trade in the products of an endangered species or threatening the live whale population. For that reason, I support the act.

Mr. KENNEDY. Mr. President, I thank the Committee on Commerce and its distinguished chairman, the Senator from Washington (Mr. Magnuson) and the Subcommittee on Environment and its distinguished chairman, the Senator from Michigan (Mr. Philip A. Hart) for all the time and effort they gave to this legislation which I introduced with the Senator from Massachusetts (Mr. Brooke) to preserve the art of scrimshaw. I am particularly grateful to the staff members of the committee for the enormous amount of work which they put into this bill in refining it to insure that our absolute commitment to end the slaughter of whales was not in any way weakened.

S. 229 which Senator Brooke and I introduced on January 17 permits the sale and shipment in interstate commerce of finished scrimshaw products. An exemption period of 2 years is granted for interstate sale and shipment at the wholesale level and for a period of 7 years for retail sale and shipment interstate.

This legislation preserves the art of scrimshaw developed by American whalemen during the period when this Nation was struggling to become independent and self-sufficient. It is particularly appropriate as we move toward the celebration of the Bicentennial that we preserve those art forms which reflect our heritage and our culture.

The distinguished author E. Norman Flayderman points out how scrimshaw art products reflect the spirit of an important time in our history:

> American whaling days are gone forever. Although the era can never be relived, the intriguing artifacts that remain are highly significant reminders of a wonderful era of our past that succeed in catching the spirit of a magnificent and departed period.

President Kennedy reflected that scrimshaw "tells us a very important part of our lives—our lives at sea." And it was President Kennedy's own collection of scrimshaw that reminded so many Americans of a courageous period in our history.

The legislation we act on today will allow our hundreds of scrimshaw artists sufficient time to learn their art on new materials. These artists are etching on beef bone and synthetic materials now in an effort to find a readily available material to continue their work. It will allow museums and collectors a chance to obtain scrimshaw products that are available in States other than their own prior to returning to the time when only sales within State borders will be allowed.

Two very important sections of this bill assure that this Nation's commitment to stop the killing of whales is in no way jeopardized or weakened. Any person seeking an exception must establish the whale's teeth or bone were taken legally. And the legislation sets up a special task force to insure compliance with these restrictions and end the smuggling of whale's teeth that continues even today.

We owe a special debt of gratitude to the environmental and animal protection groups, particularly representatives of the Fund for Animals who gave us so much of their time and their valuable suggestions to insure that this legislation did not weaken the Endangered Species Act of 1973 and who helped us strengthen the provisions to enforce compliance with the law to end activity in illegally taken teeth and whale bone. Without their help we would have been unable to develop the legislation we act on today reflecting both our commitment to end the killing of whales and our commitment to preserve scrimshaw as an American art form.

Any legislation which amends the Endangered Species Act, a law universally recognized as the strongest and most effective legislation in protecting animals threatened with extinction, must be very carefully and thoughtfully drawn to assure that the Congress' commitment to protecting endangered animals is not weakened. The amendment we consider today has been under consideration for 10 months, has been the subject of public hearings in the House, and has had the valuable input of the environmental and animal protection groups. And after all of that study and the enormous amount of work by the Commerce Committee and its staff, we were able to achieve an amendment which reaffirmed and strengthened the resolve of the Congress to protect the whales. For these reasons, I will oppose any amendment to this legislation to provide for other exceptions which have neither been studied nor considered and on which those most expert in protecting our endangered animals have had no opportunity to comment.

Again, I want to thank Senator Philip A. Hart, the Environment Subcommittee and the Commerce Committee for their report on this bill which means so much to the scrimshawers along our coasts.

Mr. Moss. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The Acting President pro tempore. The clerk will report.

The legislative clerk read as follows:

On page 4, strike line 18 and insert in lieu thereof "shaw products for personal use by the purchasers thereof, if such products were held lawfully within the United States on December 21, 1972."

On page 4, between lines 21 and 22, insert "As used in this paragraph, the term "lawfully" refers to the laws of the United States and to laws of the several states and political subdivisions thereof."

On page 5, line 20, immediately following "extent", insert "reasonably".

Mr. Moss. Mr. President, I ask unanimous consent that the amendments be considered en bloc. They occur in three places and, basically, in the same package.

The Acting President pro tempore. Without objection, it is so ordered.

Mr. Moss. Mr. President, the amendment is a minor conforming amendment which I have discussed with the Senator from Alaska and which I understand presents him with no problems.

The amendment insures that with respect to exemptions granted for the sale and movement in commerce of finished scrimshaw products for personal use, that the person wishing to sell those products must also demonstrate that they have been legally taken. This is an inadvertent omission from the bill and conforms it with the criteria for the exemption for wholesale movement or sale of finished scrimshaw products.

The insertions are simply to show that the scrimshaw was legally taken, legally acquired, and that the person, therefore, had a right to carry it in interstate commerce or dispose of it.

Does the Senator from Alaska understand that is the purpose of the amendment?

Mr. Stevens. I am happy to state to my friend, the Senator from Utah, that this amendment is a clarifying amendment that we have examined, Mr. President, and it is acceptable.

I think it does clarify the intent and purpose of the bill as it was originally introduced and reported from our committee.

Mr. Moss. I am happy to yield back the remainder of my time. Does the Senator yield back any time on this amendment?

Mr. Stevens. On this amendment, yes.

The Acting President pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. Stevens. Mr. President, yielding myself whatever time I need, this bill is a needed bill, and I do believe that it does clarify a problem with regard to the scrimshaw-type products.

I have introduced, and there is before the Senate, my amendment No. 338, which deals with a similar type problem. In all candor, we did not hold hearings on S. 229 because we felt that there was really no necessity to do so in view of the fact it was very limited, and an exemption with a purpose that no one had any objection to accomplishing.

My amendment deals with a similar type of situation with regard to any person who holds any fish or wildlife as a trophy if that trophy was taken before the effective date of the Endangered Species Act, and the Marine Mammal Protective Act of 1972 amendment.

I find I do not believe there is any opposition to clarifying this problem for these people, because they have taken their trophies at a time when it was lawful to take them, and they were sort of caught in midstream, so to speak, with items that were either taken abroad or taken within this country, and they were not presented to the taxidermist, which is also a form of art, I am sure the Senator from Utah will agree, and yet they have not been able to preserve their trophies on a permanent basis.

As one who supported both of these acts, the Marine Mammal Act and the Endangered Species Act, I felt it was not our intention to make it retroactive, but to protect the mammals and endangered species that were still alive, and that we recognized prior to it that under the act a person could have lawfully taken some of the species that are now protected.

I had intended to offer this amendment at this time and, Mr. President, I ask that the amendment be printed in the Record at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. STEVENS. I do not intend to offer the amendment at this time because we have now ascertained that there are two dates that are operable as far as this amendment is concerned, one being the lawful acquisition of such a trophy prior to the date of the Endangered Species Act. Under the regulation that was then in force, there still could have been some of these species brought into this country under certain circumstances.

After the date of the amendment, the importation of some of those animals that were lawfully taken was still made unlawful by the new act.

It really, Mr. President, does not cover many people and it is a difficult thing to even hold hearings on this type of thing. Primarily, it applies to those people who are able to take a safari, able to go into our neighboring country of Mexico and participate in a hunt. After the lawful and successful conclusion of that hunt, they found they could not bring their trophies back into the United States, because of passage of the act and its retroactive interpretation.

However, I have discussed this matter with my good friend from Utah. Even though at the time this bill was reported from our full committee, on my motion I might add, I thought that we had an understanding that this amendment to protect these few people would be in order, because of the technicalities involved, and in discussing an amendment to make certain we are not reopening a door that we all intended to close, and at the same time in order that we might frame an amendment to these two laws to make certain this limited number of people is not discriminated against in terms of intent of the Congress at the time those two acts were passed, I have asked the Senator from Utah and understand our committee is prepared to hold a hearing on the subject and determine exactly what language would be appropriate in order to grant this very limited exemption to these people.

As I said, I feel they were caught in midstream, as we did pass the two very significant acts, as far as the future is concerned.

So if my colleague agrees, and I understand he does, that we will hold hearings on the amendment which I shall introduce in the form of a bill, and I do not intend to offer it today at this point——

Mr. Moss. Will the Senator yield?

Mr. Stevens. I am happy to.

Mr. Moss. I would like to confirm what the Senator has said, that this matter has not been subject to hearings. This bill simply went through a 30-day comment period and no formal hearings were held. But I assure the Senator from Alaska that our committee will hold hearings early this year on the matter that he now has suggested in his amendment needs clarification.

I agree that it does need some clarification and we are anxious to hold a hearing so that we can frame the language properly to accomplish the purpose the Senator has indicated. I am happy to give him that assurance from the committee, that the hearings will be scheduled on this subject matter that he intends to introduce a bill shortly and we will dispose of this matter because it is of importance, even though it is limited in application to a relatively small number of people.

It is of considerable importance to them, and since we have passed these two acts that impinge on those people, we should clarify fully that we intended it to be prospective and not retroactive to a period of time that would be unfair to them.

Mr. Stevens. I thank the Senator from Utah.

Mr. President, in the case of species that were legally taken before the enactment of the Marine Mammal Act or the Endangered Species Act—and it has been interpreted that those acts now prohibit the lawful use of the animal which was taken prior to the prohibition set down by those acts—I feel that it is only right and just that we make certain that it is not a retroactive application to prevent the utilization of those animals that were, as I said, lawfully taken.

We had no intention—at least I had no intention—of placing a burden on those who had lawfully conducted themselves before the date of the act, either act, and it seems to me only the sensible course—as we are in the case of the scrimshaw amendment—to recognize that prior lawful conduct should not be penalized through an interpretation of the law that actually imposes a penalty for having possession and trying to utilize an animal that was lawfully taken.

I think that the amendment I have proposed is a reasonable one. It would give 120 days for these people to come forward and to establish on a reasonable basis that they had complied with the law at the time and give the Secretary discretion to administer this limited exemption.

It would also give him a balance of a year after the passage of the amendment I suggest to take care of any people who may not have heard of this new exemption. Sort of an extraordinary discretionary period—which is not unlike the bill before us, it has a 7-year period, as a matter of fact—since there are people, it does take time for them to understand that Congress has changed the interpretation that makes it retroactive.

I feel that it is sort of a technical failure of our original intent.

I understand that this bill does have clearance of the major conservation organizations and I am hopeful that they will realize that what I am trying to do is to also clarify the retroactive application of these two laws and not open the door, so to speak, to any taking of animals that are now on the endangered species list or covered by the Marine Mammal Protection Act.

As I said, on that basis, I do not intend to offer this amendment.

I do support the original bill. As a matter of fact, I believe I cosponsored it, because scrimshaw is an art that is well known.

We have similar forms of art coming out of my State now even under the provisions of the Marine Mammal Act and I think it is something that we should recognize as being a legitimate object of clarifying legislation to pass S. 229.

I might say to my friend from Utah who is managing the bill, to my knowledge, there is no Member of the Senate on my side of the aisle who has objected to the bill. I have no intention to ask for a rollcall vote even if the manager of the bill does not desire one.

So I am happy to endorse this bill and I am very pleased to have the assurance of our Commerce Committee that we will proceed with some dispatch to take care of this limited number of people. I understand less than 100 people would be covered by my amendment. On the other hand, I believe they are entitled to justice, too.

Exhibit 1

On page 3, line 14, immediately after "products" insert "and certain fish or wildlife trophies".

On page 4, line 6, strike out "two".

On page 6, line 2, immediately after "paragraph" insert "or paragraph (5)".

On page 6, line 3, strike out "this" and insert "any such".

On page 6, line 6, strike out "this" and insert "any such".

On page 6, between lines 8 and 9, insert the following:

"(5)(A) The Secretary may grant, under such terms and conditions as he may prescribe, exemptions to the prohibition in clause (A) of section 9(a)(1) of this Act to any person holding any fish or wildlife as a trophy, if such fish or wildlife was lawfully held by such person on the date immediately preceding December 28, 1973.

"(B) Any person seeking an exemption under subparagraph (A) of this paragraph shall—

> "(i) submit to the Secretary within one hundred and twenty days after the effective date of this paragraph a complete and detailed inventory of all such fish or wildlife held as trophies by such person;
>
> "(ii) apply to the Secretary in writing, in such form or manner as the Secretary may designate, for such exemption; and
>
> (iii) supply the Secretary with such records, reports, and other documents to show that such holdings for which the exemption is being sought were legally acquired in accordance with the requirements of subparagraph (A) of this paragraph.

"(C) The Secretary shall grant an exemption pursuant to this paragraph only for the holdings reported in such inventory required under subparagraph (B)(i) of this paragraph, except that notwithstanding subparagraph (B)(i) of this paragraph, the Secretary may, for good cause shown, extend, on a case-by-case basis, the time for filing such inventory for such period as he may determine to be reasonable, but in no event for a period in excess of the twelve-month period following the date of the enactment of this subparagraph."

On page 6, line 9, strike out "(5)" and insert "(6)".

On page 6, line 15, immediately before the period insert a comma and the following: "and any trophy referred to in paragraph (5)".

On page 6, line 19, immediately after "(4)" insert "or (5)".

On page 6, line 24, immediately after "mammals" insert "and trophies under paragraph (5),".

Mr. **Bentsen**. Mr. President, the Scrimshaw Art Preservation Act of 1975 is an important measure that will correct a serious oversight and injustice in the Endangered Species Act of 1973. S. 229 is designed to allow the many individuals who have large quantities of lawfully acquired carved whale bone and teeth to take their products to market. The Congress took a significant step toward meeting its rsponsibilities to preserve and protect the valuable and irreplaceable resource of marine life when it passed the Marine Mammal Protection Act of 1972. The act prohibited the importation and sale of parts and products of marine mammals in interstate and foreign commerce and clearly established legal protections to prevent the slaughter of such mammals as the whale and the dolphin. Significant in the Marine Mammal Protection Act is a provision that its prohibitions do not apply to marine mammals that were taken before the December 21, 1972 effective date of the act. The Endangered Species Act of 1973 added further protections by preventing the importation and sale of the parts and products of any animals placed on the endangered species list, but without respect to the time at which the animals were taken. The result has been that while products of marine mammals taken before December 21, 1972, were legally transported and sold under the 1972 protection act, dealers in products made from animals subsequently placed on the endangered species list, are now prevented from selling their products made from legally obtained materials. The whale is one of those animals that now appears on the endangered species list.

The art of scrimshaw carving in whalebone and teeth, is an ancient and respected art that is threatened by the oversight in the passage of the 1973 Endangered Species Act. The artisans and dealers of scrimshaw possess substantial inventories of legally acquired whalebone and teeth used in their craft, but they are prohibited from marketing the finished products. The Scrimshaw Art Preservation Act of 1975, S. 229, will allow the Secretary of Commerce to grant exemption for the sale and shipment of scrimshaw and scrimshaw products. This amendment to the Endangered Species Act will alleviate the substantial and unintended financial hardship currently experienced by scrimshaw artisans and dealers. The exemptions would not encourage continued slaughter of the whale, because they would apply only to finished products. S. 229 creates an elaborate reporting procedure that requires the Secretary of Commerce to determine positively that the raw materials were acquired legally before the effective date of the Marine Mammal Protection Act. S. 229 also places a firm time limitation on the extension of the allowed exemptions. Under the bill, the Secretary of Commerce may allow wholesale shipment and sale of finished scrimshaw products for a period of 2 years following passage of the act. The period for retail sale for the personal use of finished scrimshaw is 7 years. These time limitations make it clear that the purpose of this legislation is to allow scrimshaw dealers to move their presently held inventories of these products.

The art of scrimshaw was developed in the early days of our Nation's history by New England whalers who carved figures from and designs in whalebone and teeth to pass the long months at sea away from home. The popularity of scrimshaw grew from a pastime on whaling expeditions as the Nation expanded to the West. Today the art is practiced in the Pacific Northwest, the Southwest, Alaska, and

Hawaii. The traditional skills have been adapted to new methods and reflections of the culture and heritage of other regions beyond the original New England nautical motifs.

While other raw materials may be used for the scrimshaw art, most artisans have not had enough time to adapt their skills and methods to other media such as beef bone. As an important craft in the culture of many areas in our country, the art of scrimshaw should be given the opportunity to survive. The bill, S. 229, grants this opportunity.

In view of the cultural importance of this art and the financial hardship created through legislative oversight, I urge my colleagues to vote in favor of the Scrimshaw Art Preservation Act.

Mr. Brooke. Mr. President, this legislation is designed to allow trade in antique scrimshaw work to continue while assuring that no living whales will face any danger. When the 93d Congress enacted the Endangered Species Act a technical error prohibited interstate commerce in scrimshaw art. Many of our antique dealers were left with old and valuable pieces of scrimshaw art of which they could not dispose. These antiquarians are themselves firm environmentalists who would not for an instant tolerate any contemporary killing of the world's remaining whales; they deserve to be able to carry on their trade in examples of this art form which, under our new laws, is a thing of history.

Both Senator Kennedy and I worked hard for the passage of both the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973. Our commitment to the preservation of the whale is total and unswerving. This legislation admits no possibility of changing or violating the moratorium on whale killing which is in effect, I hope, indefinitely. Neither the Marine Mammal Protection Act nor the Endangered Species Act is in any way weakened or threatened by this proposal. In fact, it simply makes the 1973 act technically consistent with the Marine Mammal Protection Act by permitting the trade of antique scrimshaw pieces. There is no way in which this objective is in conflict with protection of living whales, nor would I tolerate any move which did in fact endanger this, or any other, species.

I trust my colleagues will enact this relief for our antique dealers without delay.

Mr. Moss. Mr. President, I yield back the remainder of my time.

Mr. Stevens. Mr. President, I yield back the remainder of my time.

Mr. Moss. Mr. President, if there are no further amendments, I ask for third reading of the bill.

The Acting President pro tempore. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The Acting President pro tempore. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 229

AN ACT To amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Scrimshaw Art Preservation Act of 1975".

SEC. 2. (a) The Congress finds and declares that—

(1) All forms of art and culture which reflect this Nation's heritage should be preserved, as the United States prepares for its bicentennial year.

(2) Scrimshaw is an art form which was developed during the Nation's early years by New England whalers and others; it has been practiced by skilled American craftsmen and artisans ever since.

(3) The perpetuation of this part of the culture and heritage of the United States is threatened by the prohibition enacted in 1973 against the marketing of whale bone and teeth.

(b) It is the purpose of the Congress in this Act to exempt scrimshaw and scrimshaw products from the prohibitions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 3. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by (1) redesignating paragraphs "(10)" through "(16)" thereof as paragraphs "(11)" through "(17)" thereof; and (2) by inserting therein the following new paragraph:

"(10) The term 'scrimshaw' means an art from which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, the bones and teeth of marine mammals of the order Cetacea."

SEC. 4. Section 10(b) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (b)) is amended by adding at the end thereof the following two new paragraphs:

"(4)(A) The Secretary of Commerce may exempt persons from the prohibitions contained in subparagraphs (E) and (F) of section 9(a)(1) of this Act—

"(i) with respect to the wholesale movement or sale of finished scrimshaw products, if such products or the raw materials for such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than two years after the date of enactment of this provision; and

"(ii) with respect to the retail sale of finished scrimshaw products for personal use by the purchasers thereof, if such products were held lawfully within the United States on December 21, 1972, except that no such exemption shall be granted or remain in effect more than seven years after the date of enactment of this provision. As used in this paragraph, the term 'lawfully' refers to the laws of the United States and to laws of the several States and political subdivisions thereof.

Any such exemption may be granted by such Secretary upon such terms and conditions as he shall prescribe, including, but not limited to, requiring such persons to register inventories; to maintain complete sales records; to permit duly authorized agents of such Secretary to inspect any such inventories and records; and to prepare and submit to such Secretary any reports requested by him.

"(B) Any person who seeks an exemption pursuant to any provision of subparagraph (A) of this paragraph shall—

"(i) submit to such Secretary, within one hundred and twenty days after the date of enactment of this paragraph, a complete and detailed inventory, in such form and manner as such Secretary shall prescribe, of the quantity of bone and teeth of marine mammals of the order Cetacea and of parts of and products from such bone and teeth, which are held or otherwise controlled by such person. The Secretary of Commerce shall grant an exemption pursuant to such subparagraph only for the holding reported in such inventories;

"(ii) apply to such Secretary for such exemption, in such form and manner and with such submissions as such Secretary shall prescribe; and

"(iii) submit to such Secretary sales records, reports, and other documents and materials, to the extent reasonably necessary to establish that the holdings with respect to which an exemption is sought were acquired in accordance with the subparagraph (A).

"(C) There shall be a rebuttable presumption, in any action brought under this Act for a violation of a provision of section 9(a) of this Act, that no exemption authorized by this paragraph is applicable. Any person who claims the benefit of any exemption granted pursuant to this paragraph shall have the burden of rebutting such presumption in such an action. Regulations promulgated by the Secretary of Commerce with respect to exemptions pursuant to this paragraph shall be effective on the date of final publication, notwithstanding any other provisions of this Act.

"(5) Within one hundred and twenty days after the date of enactment of this paragraph, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of the Treasury shall establish an interagency task force to enforce the provisions of this Act applicable to the bone and teeth of marine mammals of the order Cetacea and parts of and products from such bone and teeth. This task force shall act in addition to, and not in lieu of, existing enforcement activities, and shall concentrate its activities in those regions and areas which are most susceptible to unlawful activity as a result of exemptions granted under paragraph (a) of this subsection. The Secretaries of the Interior, Commerce, and the Treasury shall report jointly to the Congress and the President, within twelve months after the date of enactment of this paragraph, on the extent to which the provisions of this Act have been violated with respect to the bone and teeth of such mammals and with respect to the effectiveness of this task force in preventing such violations.".

The title was amended so as to read:

A bill to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw and for other purposes.

[From the Congressional Record, June 24, 1976]

SENATE CONCURRENCE IN HOUSE AMENDMENTS TO S. 229, WITH AMENDMENTS

SCRIMSHAW ART PRESERVATION ACT OF 1975

Mr. FORD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 229.

The ACTING PRESIDENT pro tempore (Mr. Proxmire) laid before the Senate the amendments of the House of Representatives to the bill (S. 229) to amend the Endangered Species Act of 1973 to assure the perpetuation of the art of scrimshaw, and for other purposes, as follows:

Strike out all after the enacting clause, and insert: That section 4(f)(2)(B)(ii) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f)(2)(B)(ii)) is amended by striking out "subsection (b)(A), (B), and (C)" and inserting in lieu thereof "subsection (b)(1)(A)".

SEC. 2. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

"(f)(1) As used in this subsection—

"(A) The term 'pre-Act endangered species part' means—

"(i) any sperm whale oil which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

"(B) the term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

"(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species aparts for which the applicant seeks exemption;

"(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9(a) of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

"(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.".

Sec. 3. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is further amended—

(1) by striking out "subsection" in the first sentence of subsection (c) thereof and inserting in lieu thereof "section"; and

(2) by striking out the period at the end of the second sentence of subsection (c) thereof and inserting in lieu thereof the following: "; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit.".

Sec. 4. Section 11(e)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1540(e)(3)) is amended—

(1) by insertinng immediately before the words "execute and serve any arrest warrant," in the second sentence thereof the following: "make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following: ", but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such

property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.".

SEC. 5. Paragraph (1) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532(1)) is amended by striking the period and inserting in lieu thereof ": *Provided, however*, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.".

Amend the title so as to read: "An Act to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act."

Mr. FORD. Mr. President, I understand that these amendments have been agreed to on both sides and all those who are interested have agreed to them.

Mr. President, the Senate and the House have approved differing versions of S. 229, which would create exemptions from certain trade prohibitions contained in the Endangered Species Act of 1973. The House version is now at the desk. In further amending the bill slightly and sending it back to the House, we will expedite the ultimate enactment of the legislation and clarify some of its provisions.

The Endangered Species Act was enacted to prohibit the importation and sale in interstate and foreign commerce, of any endangered species of animal or plant, or their parts and products. Congress had earlier enacted the Marine Mammal Protection Act on October 21, 1972 which contained such prohibitions with respect to species of marine mammals only.

The Marine Mammal Protection Act expressly provides that the interstate trade prohibitions do not apply to marine mammals taken prior to December 31, 1972, the effective date of the act. However, the Endangered Species Act contains no such "grandfather" clause. This discrepancy has resulted in the application of the Endangered Species Act prohibitions to marine mammal parts and products otherwise legally held or taken under the Marine Mammal Protection Act.

To remedy this situation with respect to scrimshaw, an art form using whale bone and teeth, the Senate Committee on Commerce approved, and the Senate passed S. 229. This bill would authorize the Secretary of Commerce, who administers the Endangered Species Act with respect to whales, to grant exemptions for a limited period of time for the sale of finished scrimshaw products in interstate commerce. This would permit scrimshaw artisans, known as scrimshanders, sufficient time both to dispose of their present inventories and to adapt their art to a new medium, without encouraging endless trade in whale products.

In its deliberations on the Senate-passed bill, the House Merchant Marine and Fisheries Committee expanded S. 229 to include additional authority for issuing exemptions for legally held sperm whale oil. The exemption for sperm whale oil was deemed necessary to allow those who legally held this oil on December 31, 1972, to dispose of it. This includes the General Services Administration which holds approximately 23,400,000 pounds of sperm whale oil in the national stockpile as well as several private companies. The committee also made several other minor changes in the Endangered Species Act at the request of the Interior Department to improve administration and enforcement of the act.

During a recent oversight hearing on the Endangered Species Act held by the Senate Commerce Committee, three minor modifications to the House-passed bill were suggested. Rather than going to conference, however, we can expedite the entire process by sending the amended bill back to the House for its expected early approval. By taking this course we would also avoid any potential "scope of conference" problems that might be encountered in a conference with respect to the inclusion of the amendments.

The first amendment simply clarifies that the exemption for sperm whale oil applies to derivatives of this substance as well, including, for instance, spermacetti which is used by pharmeceutical companies as an ingredient in lotions, cosmetics, and the like. While this is the intent of the House version, it is desirable to make this absolutely clear.

The second amendment responds to a request by the General Services Administration that the validity of the contracts entered into by GSA with private companies for the disposal of the Nation's stockpile of sperm whale oil be made clear. This provision would not, however, legalize trade that took place in this material prior to enactment of S. 229.

The third amendment speaks to the effect which enactment of S. 229 would have on the enforcement of the existing Endangered Species Act prohibitions. The Department of Commerce has been enforcing these prohibitions, and sanctions have been applied in several cases. In addition, investigations are presently underway in connection with both civil and criminal violations of the act by persons dealing in scrimshaw and sperm whale oil. The purpose of this amendment is to resolve any uncertainty regarding previous enforcement actions or on-going investigations. The amendment simply states that nothing in S. 229 shall be constructed to, first, exonerate any person for any act committed, prior to the date of enactment of S. 229, in violation of the provisions for which exemptions are being granted, or second, to immunize any person from prosecution for any such act.

The effect of S. 229 with these amendments will be to allow the interstate sale of legally held scrimshaw and sperm whale oil, but to preserve the right to prosecute persons who have violated existing provisions of the Endangered Species Act by trading in these whale products previous to these exemptions. The Commerce Committee is particularly concerned that persons who willfully ignored the act's provisions be subject to prosecution.

In its report on S. 229. the committee made clear that this would be a one-time exemption which would by no means encourage an endless trade in products of endangered species. I would like to reiterate that point at this time and assure my colleagues in the Senate that enactment of S. 229 and these amendments will in no way pose a threat to the living whale population.

With this assurance, I urge the adoption of the amendments.

Mr. President, I move that the Senate concur in the House amendment with two amendments which I send to the desk.

The ACTING PRESIDENT pro tempore. The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Kentucky (Mr. Ford), for himself and Mr. Magnuson, proposes unprinted amendment No. 84:

Section 2 of the House amendment to the Senate bill is amended as follows:

Amend subsection 10(f)(1)(A)(i) by inserting after the term "sperm whale oil" the term ", including derivatives thereof,".

Section 2 of the House amendment to the Senate bill is amended as follows:

Amend subsection 10(f) by inserting at the end of paragraph (5) the following two new paragraphs:

"(6)(A) Any contract for the sale of pre-Act Endangered Species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973 shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under subsection 9(a)(1)(F).

"(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act."

Mr. KENNEDY. Mr. President, I wish to thank the Commerce Committee Subcommittee on Environment and its most distinguished chairman, Senator Phil Hart, for the time and effort they have given to consideration of this legislation which I introduced to preserve the art of scrimshaw. I am particularly grateful to the staff members of the subcommittee, specially Kathi Korpon, for their work in refining this legislation to insure that our absolute commitment to end the slaughter of whales is in no way weakened by this amendment to the Endangered Species Act.

The legislation we act on today will permit the sale and shipment in interstate commerce of scrimshaw products for a limited period of time, 3 years, and under conditions which guarantee that no illegally obtained whale products are introduced into commercial activity.

It is particularly appropriate as we celebrate the Bicentennial that we preserve those art forms which reflect our unique heritage and culture. The noted author and scrimshaw expert E. Norman Flayderman points out:

> American whaling days are gone forever. Although the era can never be relived, the intriguing artifacts that remain are highly significant reminders of a wonderful era of our past that succeed in catching the spirit of a magnificent and departed period.

President Kennedy reflected that scrimshaw "tells us a very important part of our lives—our lives at sea." And it was President Kennedy's own collection of scrimshaw that reminded so many Americans of an exciting and courageous period in our history.

This legislation will allow our hundreds of scrimshaw artists sufficient time to learn their art on new materials. These artists are etching on beef bone and synthetic materials now in an effort to find a readily available material for their work. It will allow museums and collectors an opportunity to obtain scrimshaw products for their collections that are only available in states other than their own.

Most importantly, this bill will assure that this Nation's commitment to stop the killing of whales is in no way jeopardized. Any person seeking an exemption must establish that the whale products were taken legally. These inventories of legally held products will assist the Department of Commerce in their efforts to enforce provisions of the

Endangered Species Act to end the smuggling of illegally taken products.

We owe a special debt of gratitude to the environmental and animal protection groups, particularly representatives of the Fund for Animals who gave us so much of their time and their valuable suggestions to insure that this legislation did not weaken the Endangered Species Act and who helped us strengthen provisions to enforce compliance with the law to end activity in illegally taken teeth and whale bone. Without their help we would not have been able to develop the legislation we act on today reflecting both our commitment to end the killing of whales and our commitment to preserve scrimshaw as an American art form.

Any legislation which amends the Endangered Species Act, a law universally recognized as the strongest and most effective legislation in protecting animals in danger of extinction, must be carefully and thoughtfully drawn to assure that the Congress commitment to the protection of endangered animals is not diminished. The amendment we approve today has been under consideration for a year and a half, has been the subject of public hearings, and has had the most valuable input of the animal protection groups. As a result we were able to draft this amendment to the Endangered Species Act which reaffirmed and strengthened the resolve of the Congress to protect the whale.

Mr. President, I share with my colleagues in the Senate a deep sense of regret that the slaughter of the sperm whale continues in record numbers even today. The largest quota permitted for the world's whaling nations is for the killing of the sperm whale. The United States is absolutely committed to end the whale slaughter and we renew our efforts to encourage other nations to follow our lead.

We are all too familiar with the pattern which recognizes the danger to our marine mammals and wildlife only after it is too late. I again assure all those citizens who have worked so hard to end the killing of the sperm whale that they have my strongest support. And I am hopeful that we in the Congress, working together with these citizens, can be successful in protecting the sperm whale for generations to come.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion to concur in the House amendment with the Senate amendments.

The motion was agreed to.

[From the Congressional Record, July 1, 1976]

S. 229 PRESENTED TO THE PRESIDENT

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, July 1, 1976, he presented to the President of the United States the following enrolled bills:

S. 299. An act to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

[From the Congressional Record, July 19, 1976]

S. 229 Signed Into Law (Public Law 94–359)

Approval of Bills and Joint Resolutions

A message from the President of the United States announced that he has approved and signed the following bills and joint resolutions:

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On July 12, 1976:

S. 229. An act to amend the Endangered Species Act of 1973 in order to permit the disposal of certain endangered species products and parts lawfully held within the United States on the effective date of such Act.

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Annotated Bibliography of Hearings

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Fish and Wildlife Misc., Part 5, 1974. Washington, U.S. Print Off., 1974. 228 p. "Serial no. 93–46."

Continuation of hearings on miscellaneous fish and wildlife conservation proposals, including briefing on implementation of Endangered Species Act of 1973. Includes correspondence throughout.

Hearing on Nov. 22, 1974 includes testimony from L. A. Greenwalt (FWS), J. W. Gehringer (NMF).

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Whaling, Whale Oil, and Scrimshaw. Hearings, 94th Congress, 1st session. May 13, 14, June 9, 10, 13, 1975. Washington, U.S. Govt. Print. Off., 1975 p. "Serial No. 94–7."

Hearings on legislation relating to the protection of whales. June 9, 10 hearings consider the following bills to provide exemptions to the Endangered Species Act of 1973:

H.R. 3465, authorizing disposal of sperm oil from the national stockpile.

H.R. 2057, to exempt stocks and inventories of whale bones and teeth acquired prior to 1973 from prohibitions under the Endangered Species Act of 1973. Also considers similar S. 229.

Includes submitted statements, correspondence, reports, and "Economic Impact of Suggested Options for Import Sanctions Against Countries Disregarding the Conservation Measures of the International Convention for the Regulation of Whaling" by CRS.

June 9 witnesses include: C. A. Mosher (Rep. Ohio), T. M. Thawley (GSA), A. S. Bistritsky (Scandinavian Oil Co., W. Meckes (Werner G. Smith Co.).

June 10 witnesses include: A. Wickham, (Friends of the Earth), C. Stevens (Society for Animal Protection Legislation) C. E. Koury (Fund for Animals), M. M. Kaufman (Let Live, Inc.), J. Risk (Animal Proection Inst), M. A. Lipman (New Bedford, Mass., Area Scrimshanders), E. U. C. Bohlen (FWS), J. W. Gehringer (NMFS).

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Endangered Species Oversight. Hearings, 94th Congress, 1st session. Oct. 1, 2, 6, 1975. Washington, U.S. Govt. Print. Off., 1975. 367 p. Implementation and Administration of the Endangered Species Act and its amendments, and to review the problems and issues encountered. Serial No. 94–17.

Hearings on implementation of Endangered Species Act of 1973 provisions prohibiting interstate or foreign commerce in endangered animals of destruction of their critical habitats and of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1975.

Oct. 2 and Oct. 6 hearings include informal sessions with participation by members of the audience. Earl Baysinger (FWS) participates in discussions; George Steele (Zoological Actions Committee), Bruce MacBride, Peter Kelsey (Solicitor, Interior Dept.), Ruby Compton (Natural Resource Defense Council), and Gerard Bertrand (CEQ) participate in questioning of Federal agency witnesses during the Oct. 6 hearings.

Supplementary material includes submitted statements, articles, correspondence, and a list of faunal and floral taxa which Interior Dept. has been petitioned to add to endangered or threatened species' list.

Hearing on October 1 includes testimony from L. A. Greenwalt (FWS), K. M. Schreiner (Dept. of Interior), C. R. Bavin (Dept. of Interior), J. W. Gehringer (NMFS), L. M. Talbot (CEQ).

Hearing on October 2 includes testimony from R. K. Yancey (La. Wildlife and Fisheries Commission), J. E. Poser (Amer. Fur. Merchants Assn.), K. L. Newman (Archer-Daniels-Midland Co.).

Hearing on October 3 includes testimony from R. Bitely (Intl. Assn. of Game, Fish and Conservation Commrs.), T. D. Jarvis (Natl. Parks and Conservation Assn.).

Hearing on October 6 includes testimony from: L. A. Greenwalt (FWS).

Testimony from wildlife conservation groups includes: J. W. Grandy (Defenders of Wildlife, Sierra Club, N.Y. Zoological Soc. and Animal Protection Inst.), C. Stevens (Society for Animal Protective Legislation), L. Regenstein (Fund for Animals), D. A. Poole (WMI), M. M. Kaufmann (Monitor, Inc., Let Live, Inc.).

Testimony from captive animal owners includes: J. T. Wilds (Natl. Congress of Animal Trainers and Breeders), L. D. Harris (Circus Fans Assn.), G. E. Steele (Zoological Actions Committee), G. S. Lentz (Busch Gardens), K. J. Feld (Ringling Bros.-Barnum and Bailey Combined Shows), R. Thrun (general counsel), P. Quinn (Lion Country Safari), U. Seal (Minn. Zoological Garden and Amer. Assn. of Zoological Parks and Aquariums), R. O. Wagner (Amer. Assn. of Zoological Parks and Aquariums), W. P. Braker (Shedd Aquarium), C. L. Bieler (San Diego Zoo), T. Hunt (Zoological Animal Suppliers), F. S. Todd (Sea World, Inc.).

PART III

LEGISLATIVE HISTORY OF 1977 AMENDMENTS TO THE ENDANGERED SPECIES ACT

ENDANGERED SPECIES ACT, SECTION 6, EXTENSION OF APPROPRIATION AUTHORIZATION, PUBLIC LAW 95-212

BACKGROUND

The purpose of this legislation was to extend authorization for the Federal grant-in-aid programs (to the States), established by the ESA of 1973. Section 6 of the Act provides Federal assistance for state conservation programs which meet specific requirements. Under the original provisions of the Act, a number of states failed to qualify for section 6 funds because their state fish and wildlife agency did not possess the authority to provide blanket protection for any species listed as endangered or threatened by the Secretary of the Interior. Such agencies, instead, had authority to protect only certain categories of species, such as vertebrates, rather than all species. This amendment allow states to qualify for cooperative agreements if they satisfy some of the original requirements and have plans to devote immediate attention to those species most urgently in need of conservation programs.

Authorization for appropriations under section 6 expired on June 30, 1977. S. 1316 was introduced by Mr. Culver on April 29. 1977 and referred to the Committee on Environment and Public Works. The bill was reported to the Senate from the Committee with amendment on May 16, 1977 (S. Rept. 95-186). Hearings held by the Subcommittee on Resource Protection on April 21, 1977 (Serial 95-H19) included testimony from the National Marine Fisheries Service, International Association of Fish and Wildlife Agencies, and the Fish and Wildlife Service, all of which indicated the importance of state participation in endangered species management, and indicated strong support for reauthorization of section 6.

H.R. 4741, the predecessor bill to H.R. 6405, was introduced on March 9, 1977, by Mr. Leggett and cosponsored by Mr. Forsythe. The legislation was referred to the Departments of the Interior and Commerce for comment. The Subcommittee on Fisheries, Wildlife Conservation and the Environment held hearings on the legislation on March 22, 1977. The subcommittee received testimony from the Department of the Interior, the Department of Commerce, and the International Association of Fish and Wildlife Agencies. All of the witnesses appearing before the Subcommittee expressed support for continuing the authorization for the cooperative agreement section of the Act. The Department of Commerce witnesses indicated they were unable to take a position on the adequacy of the authorization for fiscal years 1979 and 1980 since they had not been allocated funds for section 6 in the President's fiscal year 1978 budget.

The witness from the International Association of Fish and Wildlife Agencies suggested an amendment to the bill to facilitate the development of cooperative agreements with the individual States. On March 30, 1977, the subcommittee adopted an amendment in the form of a substitute offered by Mr. Leggett and ordered a clean bill, H.R. 6405, reported to the full committee. On May 16, 1977, the Committee on Merchant Marine and Fisheries reported to the House H.R. 6405, without amendment (H. Rept. 95-333).

The Senate bill as reported out of Committee was a simple extension of the grant-in-aid program, providing $3 million for each fiscal year 1978 through 1980. The bill was amended on the floor to authorize a total of $12 million through fiscal year 1980, $9 million of which was for the Secretary of the Interior, and $3 million for use by the Secretary of Commerce. S. 1316 passed the Senate on May 25, 1977.

The House bill as reported out of Committee extended the authorization through fiscal year 1981 and provided a $16 million appropriation, which did not designate specific amounts for the two Secretaries. The House bill also contained language to facilitate qualification by the States for financial assistance under section 6 of the Endangered Species Act. The bill passed the House, unamended, on October 18, 1977. The measure was then laid on the table and S. 1316 was passed in lieu.

The Conference Committee adopted the House provisions for reauthorization of section 6 programs, and modified the qualifications for financial assistance to assure consistency with prohibitions set forth in other sections of the Act (S. Rept. 95-607). The final version of the bill authorized $10 million through September 30, 1977; and $16 million for the period beginning October 1, 1977, and ending September 30, 1981. An alternative set of requirements to be met by the States to qualify for financial assistance did not require a State conservation agency to have the authority to conserve all resident threatened or endangered species. The agency, however, requested plans to devote immediate attention to those species most urgently in need of conservation programs. An additional provision guaranteed the continued enforcement of certain prohibitions regarding the taking of resident endangered or threatened species when a cooperative agreement is entered into. The Senate agreed to the conference report on November 29, 1977. House agreement occurred on November 30, 1977. The bill was signed into law (Public Law 95-212) on December 19, 1977.

CHRONOLOGY—PUBLIC LAW 95-212

April 20, 1977—H.R. 6405 introduced and referred to House Committee on Merchant Marine and Fisheries.

April 20, 1977—S. 1316 introduced and referred to Senate Committee on Environment and Public Works.

May 16, 1977—H.R. 6405 reported to House by the Committee on Merchant Marine and Fisheries, H. Rept. 95-333.

May 16, 1977—S. 1316 reported to Senate, with amendment, by the Committee on Environment and Public Works, S. Rept. 95–186.

May 25, 1977—S. 1316 passed Senate, amended.

October 18, 1977—H.R. 6405 passed House.

October 18, 1977—S. 1316 passed House, amended, in lieu of H.R. 6405.

November 29, 1977—Senate agreed to conference report, S. Rept. 95–607.

November 30, 1977—House agreed to conference report, H. Rept. 95–823.

December 7, 1977—S. 1316 presented to the President.

December 12, 1977—S. 1316 signed into law (Public Law 95–212).

Public Law 95-212
95th Congress

An Act

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

Dec. 19, 1977
[S. 1316]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended—

Endangered Species Act of 1973, amendment.
Cooperative agreements.

(1) by striking out the period at the end of subsection (c) and inserting in lieu thereof "; or", and by adding at the end of such subsection the following:

"that under the State program—

"(A) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are complied with, and

"(B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to subparagraph (A) and this subparagraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species."; and

16 USC 1533.
16 USC 1538.

(2) by amending subsection (i) to read as follows:

Appropriation authorization.

"(i) Appropriations.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

"(1) $10,000,000 through the period ending September 30, 1977.

"(2) $16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.".

Approved December 19, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-333 accompanying H.R. 6405 (Comm. on Merchant Marine and Fisheries) and No. 95-823 (Comm. of Conference).

SENATE REPORTS: No. 95-186 (Comm. on Environment and Public Works) and No. 95-607 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 123 (1977):
May 25, considered and passed Senate.
Oct. 18, considered and passed House, amended, in lieu of H.R. 6405.
Nov. 29, Senate agreed to conference report.
Nov. 30, House agreed to conference report.

Union Calendar No. 170

95TH CONGRESS
1ST SESSION

H. R. 6405

[Report No. 95-333]

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 1977

Mr. LEGGETT (for himself, Mr. FORSYTHE, Mr. RUPPE, Mr. DE LA GARZA, Mr. BREAUX, Mr. MCCLOSKEY, Mr. BOWEN, Mr. AUCOIN, Mr. EMERY, Mr. OBERSTAR, Mr. HUGHES, Mr. TRIBLE, and Mr. AKAKA) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

MAY 16, 1977

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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A BILL

To amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended—

(1) by striking out the period at the end of subsection (c) and inserting in lieu thereof "; or", and by adding at the end of such subsection the following: "that under the State program—

"(A) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are compiled with, and

"(B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs."; and

(2) by amending subsection (i) to read as follows:

"(i) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

"(1) $10,000,000 through the period ending September 30, 1977.

"(2) $16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.".

95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 95-333

AUTHORIZATION OF SECTION 6 OF THE ENDANGERED SPECIES ACT OF 1973

MAY 16, 1977.—Committeed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MURPHY of New York, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[Including Cost of Estimate of the Congressional Budget Office]

[To accompany H.R. 6405]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 6405) to amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 6405 is to extend the authorization period for section 6 of the Endangered Species Act of 1973, and increase the authorized level of appropriations under Section 6 of the Act. In addition, the bill would amend section 6 of the Act to facilitate the development of cooperative endangered species programs with the individual States.

LEGISLATIVE BACKGROUND

H.R. 4741, the predecessor bill to H.R. 6405, was introduced on March 9, 1977 by Mr. Leggett and co-sponsored by Mr. Forsythe. The legislation was referred to the Departments of the Interior and Commerce for comments.

The Department of the Interior, in its report of March 25, 1977, strongly recommended enactment of the legislation if it was amended to conform with the Department's suggestions. The Department of the Interior suggested amending the bill to provide that the authorization for grant-in-aid in section 6(i) of the Endangered Species Act of 1973 be extended for four fiscal years at a total amount for all years not to exceed $12 million. H.R. 4741, as introduced, would provide for a three year authorization period and a ceiling on the authorization of appropriations for all three years of $9 million.

The Department of the Interior indicated that the amendment was needed in order to provide an incentive for other States to enter into the program and ultimately to return to the States authority for the management of resident endangered and threatened species.

The Subcommittee on Fisheries, Wildlife Conservation and the Environment held hearings on the legislation on March 22, 1977. The Subcommittee received testimony from the Department of the Interior, the Department of Commerce, and the International Association of Fish and Wildlife Agencies. All of the witnesses appearing before the Subcommittee expressed support for continuing the authorization for the cooperative agreement section of the Act. The Department of Commerce witnesses indicated that they were unable to take a position on the adequacy of the authorization for fiscal years 1979 and 1980 since they had not been allocated funds for section 6 in the President's fiscal year 1978 budget.

The witness for the International Association of Fish and Wildlife Agencies suggested an amendment to the bill to facilitate the development of cooperative agreements with the individual States. This proposal would amend section 6(c) of the Act to permit State endangered species programs to qualify for section 6(i) grant-in-aid funds if they satisfy the requirements of paragraphs (3), (4) and (5) of section 6(c) and if the Secretary finds that the State program includes plans to devote attention to resident endangered species of fish and wildlife most urgently in need of conservation programs. The bill, H.R. 6405, as ordered reported by the Committee included this amendment, with technical changes. This amendment is described further in the section-by-section analysis of this report.

The subcommittee gave careful consideration to the evidence presented at the hearings and the departmental reports. On March 30, 1977 the subcommittee adopted an amendment in the form of a substitute offered by Mr. Leggett and ordered a clean bill, H.R. 6405, reported to the full committee. On March 3, 1977, the Committee on Merchant Marine and Fisheries, by voice vote, unanimously reported to the House H.R. 6405, without amendment.

BACKGROUND AND NEED FOR THE LEGISLATION

The Endangered Species Act of 1973 was enacted to provide a program for the protection of endangered and threatened species, and the conservation of the ecosystems on which endangered and threatened species depend.

Section 6 of the Act establishes a mechanism for the development of cooperative endangered species programs with the individual States. Section 6 places the fundamental responsibility for establishing and overseeing an endangered species program in the Federal Government. However, section 6 mandates that the appropriate Secretary, depending upon the species involved, cooperate with the States in carrying out the endangered species program. The cooperation envisioned by section 6 includes consultation with the States concerned before acquiring any land or water under the Act, and the development of cooperative management agreements with States that establish an adequate and active program for the conservation of endangered and threatened species.

Section 6 resulted from the realization that the successful development of an endangered species program depended upon a good working arrangement between the Federal and States agencies. Although the Federal agencies have the broad policy perspective and authority to carry out the Act, the State agencies have the physical facilities and the personnel to see that State and Federal endangered species policies are properly executed.

Section 6 of the Act authorizes the Secretaries to provide financial assistance to any State which has entered into a cooperative agreement with the Federal agency under the terms of the Act. Such Federal financial assistance, however, cannot exceed 66⅔ percent of any State's estimated program cost. Federal funding can be increased to 75 percent when two or more States enter into a joint cooperative agreement with the Federal agency. Funds allocated to the States under section 6 remain available for two years. If the funds are unobligated after two years, the funds revert to the Secretary and can be allocated to other programs under section 6.

Section 6(i) of the Act authorizes to be appropriated $10 million for fiscal years 1974 through 1977. No money was appropriated under section 6(i) in fiscal year 1974 or fiscal year 1975; $2 million was appropriated to the Department of the Interior in fiscal year 1976, and $1 million in fiscal year 1977. In addition the President has requested a supplemental appropriation of $3 million in fiscal year 1977 for the Department of the Interior. This $3 million was included in the supplemental appropriation bill passed by the House on March 15, 1977 (H.R. 4877).

The Congress, in passing the Endangered Species Act of 1973, considered the State cooperative agreement program to be a vital element of the Act as a whole. Unfortunately, the development of cooperative agreements has developed much slower than originally hoped. To date, only 17 States have signed cooperative agreements with the Department of the Interior and have thereby qualified for grant-in-aid funds. The Department of Commerce has never entered into a cooperative agreement with an individual State largely because the Department has not been budgeted funds under section 6(i) of the Endangered Species Act.

Witnesses for the Department of Commerce indicated to the Committee that there are a number of endangered species under their jurisdiction that could be the subject of cooperative agreements with individual States. These witnesses also indicated that if cooperative agreements were signed with States regarding these species, some of the management duties now performed by the Federal Government could be accomplished by the State agencies.

The Committee feels that Department of Commerce activities under section 6 should now be funded. Accordingly, the Committee has included an additional $4 million in the authorization for Department of Commerce activities. The Department of Commerce has indicated to the Committee that this level of authorization will permit them to adequately establish and fund a cooperative agreement program over the next four years.

One of the greatest impediments to the development of an active cooperative agreement program has been the five requirements of section 6(c) necessary to be satisfied before a State qualified for grant-in-aid funds. A number of States are reluctant to enter into a cooperative agreement with the Federal Government because of the language of paragraphs (1) and (2) of section 6(c).

Paragraph (1) provides that before a State is eligible to receive Federal funds the Secretary must determine that the State agency has authority to conserve resident species of fish or wildlife determined by the Secretary to be endangered or threatened. Paragraph (2) requires the State agency to establish acceptable conservation programs for all resident endangered or threatened fish or wildlife which are deemed by the Secretary to be endangered or threatened. In essence, these paragraphs require States to provide blanket protection for any species listed as endangered or threatened by the Secretary.

A number of States have failed to qualify for section 6 funds because they have been unwilling to grant to their State agency the broad authority required by paragraphs (1) and (2) of section 6(c). The Committee feels that the requirements of section 6(c) should be modified to facilitate the development of cooperative agreements with the thirty-three States not now participating in the program. Some of the States not participating in a program with the Federal Government have a significant number of endangered and threatened species under their jurisdiction. The Committee believes that it is important that these States be brought into the program in order to properly preserve these species.

H.R. 6405 would satisfy the major objections raised by the States to the requirements of section 6(c). Under H.R. 6405, States could qualify for cooperative agreement funds if they satisfied the requirements of paragraphs (3), (4), and (5) of section 6(c) and if the State has plans to devote immediate attention to those species most urgently in need of conservation programs. The Department of the Interior has indicated that they are in support of this change in section 6(c).

Paragraph (3) of section 6(c) requires the State agency to be authorized to conduct investigations to determine the status and requirements for survival of resident species. Paragraph (4) requires the State agency to be authorized to establish programs for the consideration of resident endangered or threatened species. Paragraph (5) requires a finding that the State program provide for public participation in designating resident species as endangered or threatened.

Following is a list of States with cooperative agreements with the Federal Government under section 6 of the Endangered Species Act: Arkansas, California, Colorado, Delaware, Florida, Maine, Maryland, Michigan, Missouri, New Jersey, New Mexico, New York, South Carolina, South Dakota, Virginia, Washington and Wisconsin.

What the Legislation Does

The following is a section-by-section summary of H.R. 6405 accompanied by discussion where appropriate:

SECTION (1)

Section (1) would provide an alternative set of requirements to be satisfied by the individual States before they can qualify for Federal grant-in-aid funds under section 6 of the Endangered Species Act. The alternative requirements would be those listed in paragraphs (3), (4), and (5) of section 6(c) and that the State has plans under which immediate attention will be given to those resident species of fish and wildlife most urgently in need of conservation programs.

As explained in the background section of this report, this section is necessary to facilitate the development of cooperative endangered species programs with those States that are reluctant to grant broad authority to their State agency to conserve any resident species which may be determined by the Federal Government to be endangered or threatened.

SECTION (2)

Section (2) would amend section 6(i) of the Act to extend the authorization period from October 1, 1977 through September 30, 1981. This section would also establish a $16 million level of funding authorized to be appropriated during the four-year period.

The current authorization of appropriations under section 6(i) of the Act expires on September 30, 1977. As originally enacted, the Act authorized $10 million to be appropriated between 1974 and September 30, 1977.

Cost of the Legislation

In the event the legislation is enacted into law and the authorized funding is fully appropriated, the maximum cost to the Federal Government for fiscal years 1978 through 1981 would be $16 million.

Inflationary Impact Statement

Pursuant to clause 2(1) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 6405 would have no significant inflationary'impact on the prices and cost in the national economy.

Compliance With Clause 2(1)(3) of Rule XI

With respect to the requirements of clause 2(1)(3) of Rule XI of the Rules of the House of Representatives:

(A) No oversight hearings were held on the administration of this Act during this session of the Congress, beyond the one day of hearings on the predecessor legislation, H.R. 4741, held by the Subcommittee on Fisheries, Wildlife Conservation and the Environment on March 22, 1977. The Subcommitee does intend to hold oversight hearings on the administration of this act from time to time during the 95th Congress.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 2(b)(2) of Rule X.

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974 in reference to H.R. 6405 and follows herewith:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 5, 1977.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6405, a bill to amend the Endangered Species Act of 1973, regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

Attachment.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MAY 5, 1977.

1. Bill number: H.R. 6405.
2. Bill title: To amend the Endangered Species Act of 1973 regarding the requirements for state cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs.
3. Bill status: As reported by the House Committee on Merchant Marine and Fisheries.
4. Bill purpose: The purpose of the bill is to amend the Endangered Species Act of 1973 regarding the requirements for state cooperative programs and to authorize appropriation of $16 million for the period fiscal year 1978 through fiscal year 1981. This bill is authorizing legislation which requires subsequent appropriation action.
5. Budget impact:

	Millions
Fiscal year 1978:	
Authorization level	$16
Estimated costs	2
Fiscal year 1979:	
Authorization level	16
Estimated costs	3

	Millions
Fiscal year 1980:	
Authorization level	$16
Estimated costs	4
Fiscal year 1981:	
Authorization level	16
Estimated costs	5
Fiscal year 1982:	
Authorization level	0
Estimated costs	2

The costs of this bill fall in budget subfunction 303.

6. Basis for estimate: The authorization level is that stated in the bill. For the purpose of this estimate it is assumed that this legislation and the necessary fiscal year 1978 appropriation legislation will be enacted prior to fiscal year 1978. The estimated costs of this legislation are based on agency plans for this program at a $16 million authorization/appropriation level and historical spendout rates. The planned obligation level for this program would be: $3 million in fiscal year 1978; $3 million in fiscal year 1979; $5 million in fiscal year 1980; and $5 million in fiscal year 1981.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by Terry Nelson (225-7760).
10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

DEPARTMENTAL REPORT

H.R. 4741, a predecessor of H.R. 6405, was the subject of a report from the Department of the Interior and follows herewith:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., March 25, 1977.

Hon. John M. Murphy,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This responds to the request of your Committee for the views of this Department on H.R. 4741, a bill "To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973."

We recommend the enactment of H.R. 4741, if it is amended as described herein.

H.R. 4741 amends section 6(i) of the Endangered Species Act to provide for an authorization of appropriations for grant-in-aids to States of $3,000,000 for each of the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980.

The Endangered Species Act of 1973 provided new and stronger authority for the Secretary of the Interior (and the Secretary of

Commerce) to prevent the extinction of species. That authority included a broader responsibility to list species that are subject to provisions of the Act and also strengthen the Secretary's ability to protect and manage the listed species to the point where they are restored and can be removed from the list. The goal of the endangered species program is to maintain a healthy diversity of species and to preserve in their natural ecosystems species of animals and plants that are endangered with extinction or threatened with endangerment. Wherever possible, the program seeks to restore such species to the point at which it is once again a viable component of its ecosystem. Further, insofar as possible, it is our intent to prevent other species from becoming endangered.

In order to implement activities aimed at accomplishing these goals, the Endangered Species Act provides in section 6(i) an authorization for grant-in-aid to States not to exceed $10 million for the first three years after enactment and a general authorization to carry out other provisions of the Act is contained in section 15. The section 6(i) authorization requires extension in order to provide grant funds to qualified States after fiscal year 1977. Section 15 funds do not expire until the close of fiscal year 1978.

The Endangered Species Act of 1973 contains a strong Federal commitment for closer coordination and cooperation with State fish and wildlife agencies than has been the case under the Endangered Species Preservation Act of 1966, as amended by the Endangered Species Conservation Act of 1969 and repealed by the 1973 Act. This commitment takes the form of cooperative agreements and a grant-in-aid program with the States in addition to cooperative development and execution of species recovery plans. Section 6 of the Act authorizes the Secretary to enter into cooperative agreements with the States to further the purpose of the Act. The grant-in-aid provisions of section 6 provide the means of accomplishing this cooperative approach to the management of endangered and threatened species. Only States that have entered into cooperative agreements with the Secretary are eligible for grant-in-aid.

To date 17 States have qualified for grant-in-aid funds and three more are imminent. Some 48 States have contacted the Fish and Wildlife Service for advice and assistance in reaching a cooperative agreement, and we anticipate signing 25 cooperative agreements in fiscal year 1978. The expertise, manpower and cooperation of the States are essential if we are to attain the goal of the Endangered Species Act of effecting the recovery of species. Federal financial assistance in this endeavor is essential.

In fiscal year 1976, $2,000,000 were appropriated to remain available until expended for grant-in-aid to the States. The fiscal year 1977 appropriation contained an additional $1,000,000. A supplemental request has been sent to Congress requesting an additional $3 million. Of the funds appropriated in fiscal year 1976, $1,165,000 were allocated to the following States: California, Colorado, Florida, South Carolina, Michigan, Maryland, New York, Missouri, Washington, Arkansas, Virginia, New Jersey, Delaware, Maine and Wisconsin. It is anticipated that all funds appropriated under this authorization will be obligated by September 30, 1977. Examples of the types of activities for which the funds are used by the States are: to acquire the critical habitat of the Morro Bay kangaroo rat; conduct peregrine falcon nesting success surveys; to develop a gate that will pass Indiana bats but prevent people from entering certain key bat caves; to accomplish bald eagle status surveys; and to propagate peregrine falcons for release into the wild.

In order to provide an incentive for other States to enter into the program and ultimately to return to the States authority for the management of resident endangered and threatened species, we recommend that H.R. 4741 be amended to provide that the authorization for grant-in-aid in section 6(i) of the Endangered Species Act be extended for four fiscal years at a total amount for all years not to exceed $12 million. Therefore, we recommend that H.R. 4741 be amended to delete lines 10–12, and insert in lieu thereof: "(2) for the fiscal year beginning October 1, 1977, through fiscal year 1981, there is authorized to be appropriated an amount not to exceed $12,000,000".

We urge enactment of H.R. 4741 as amended above in order to assure continuation beginning the fiscal year 1978 of programs aimed at preventing the continued decline of our living natural resources.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

CECIL D. ANDRUS, *Secretary.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 6 OF THE ENDANGERED SPECIES ACT OF 1973 (16 U.S.C. 1535; PUBLIC LAW 93–205)

SEC. 6. * * *

(c) COOPERATIVE AGREEMENTS.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(1) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(2) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(4) the State agency is authorized to establish program, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species; and

(5) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened [.]*; or*

that under the State program—

(A) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are complied with, and

(B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs.

* * * * * * *

[(i) APPROPRIATIONS.—For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,00,000.]

(i) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

(1) $10,000,000 through the period ending September 30, 1977.

(2) $16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.

[From the Congressional Record, Oct. 18, 1977]

HOUSE CONSIDERATION AND PASSAGE OF H.R. 6405

ENDANGERED SPECIES ACT AMENDMENTS

Mr. MURPHY of New York. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6405) to amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such pograms.

The Clerk read as follows:

H.R. 6405

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended—

(1) by striking out the period at the end of subsection (c)and inserting in lieu thereof "; or", and by adding at the end of such subsection the following: "that under the State program—

"(A) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are complied with, and

"(B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs."; and

(2) by amending subsection (1) to read as follows:

"(i) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

"(1) $10,000,000 through the period ending September 30, 1977.

"(2) $16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.".

The SPEAKER pro tempore (Mr. Yates). Is a second demanded?

Mr. FORSYTHE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York (Mr. Murphy) and the gentleman from New Jersey (Mr. Forsythe) are recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. Murphy).

Mr. MURPHY of New York. Mr. Speaker, in 1973, Congress passed the Endangered Species Act in an attempt to slow the alarming rate at which wildlife species were becoming extinct in the United States and around the world. The Endangered Species Act provided for the development of a program for the protection of endangered and threatened species, and the conservation of the ecosystems on which endangered and threatened species depend. H.R. 6405 reauthorizes one small, but nevertheless vital, element of this historic act.

This legislation would authorize appropriations of $16 million under section 6 of the Endangered Species Act. In addition, the bill would amend section 6(c) of the act to facilitate the development of cooperative agreement programs with the States.

Section 6 of the Endangered Species Act is a little known, but highly important part of the act. It established a mechanism for the development of cooperative endangered species programs with the individual

States. The cooperation envisioned by section 6 includes consultation with the States concerned before acquiring any land or water under the Endangered Species Act, and the development of cooperative management agreements with States that establish a program for the conservation of endangered species. Those States that qualify under the act are eligible to receive section 6 matching grants on a 2-to-1 basis.

Section 6 of the Endangered Species Act expresses the congressional realization that a successful endangered species program depends upon a good working relationship with the States. Although the Federal agencies have the broad policy perspective and authority to carry out the Endangered Species Act, the States have the physical facilities and the personnel to see that State and Federal endangered species policies are properly executed.

Traditionally, State fish and game departments have had the primary responsibility for managing resident species of fish and wildlife. Section 6 of the Endangered Species Act insured that the States would continue to play an important role in the management of resident endangered and threatened species despite the Federal Government's assertion of general authority in the endangered species area. We recognized in 1973, as we do now, that if we want an endangered species program that works in fact, as well as on paper, it is imperative that the States be given authority to manage their resident species which are classified as endangered or threatened.

Unfortunately, the cooperative agreement program of the Endangered Species Act has not developed as rapidly as we had originally hoped. To date, only 17 States have signed cooperative agreements with the Federal Government and have qualified for Federal matching funds under the act. It is hoped that the changes proposed in this legislation, along with an increase in funding for State endangered species programs, will bring around the 33 States not now participating in the endangered species program.

Mr. Speaker, I would like to emphasize the noncontroversial nature of this legislation. It was reported out of the Committee on Merchant Marine and Fisheries without a single dissenting voice. This bill has nothing whatsoever to do with some of the more controversial aspects of the Endangered Species Act which have received press attention in recent months. Specifically, this bill has nothing to do with the conflict between some water development projects and the designation of critical habitat for a variety of endangered species.

Mr. Leggett. Mr. Speaker, I rise in support of H.R. 6405. This legislation authorizes appropriations of $16 million through fiscal year 1981 to carry out a small but important part of the Endangered Species Act of 1973. That act stands as the most far-reaching Federal effort to slow and prevent the destruction of hundreds of fish and wildlife species that are facing extinction as a result of man's activities. The important goal of the Endangered Species Act is the maintenance of a healthy diversity of wildlife species, and to conserve the all important ecosystems on which the wildlife species of the world depend for survival.

Although the Endangered Species Act expressed the preeminent authority of the Federal Government in the management of endangered species, it recognized that any effective conservation program demands active State involvement. Thus, section 6 of the Endangered Species Act established a mechanism for continuing State involvement in the management of resident threatened and endangered species.

Under the act, the Federal Government is authorized to enter into cooperative agreements with individual States that develop a qualifying endangered species program. Once a State has developed an acceptable endangered species program, it is eligible to receive Federal matching funds to carry out its program. In the past, these matching funds have been used for such activities as conducting peregrine falcon and bald eagle surveys, developing special gates to protect Indiana bats and propagating falcons for release into the wild.

The goal of this section is clear—the management of resident endangered species at the State level by those wildlife biologists best equipped to insure continued protection of the most beleagured members of the animal kingdom. Unfortunately, we are not close to achieving this goal.

Only 17 States have signed cooperative agreements with the Federal Government under section 6. What is worse, some of the States with the greatest number of species under their jurisdiction have not yet joined the program. Many States have not qualified for Federal financial assistance because they are frankly unwilling to provide blanket protection for any species which may be listed as endangered or threatened. The existing law requires the States to authorize such blanket protection before they can qualify for any Federal assistance.

H.R. 6405 would ease the requirements of existing law and encourage the remaining 33 States to join this all important program. I want to emphasize that this bill in no way diminishes the force or effect of the Endangered Species Act. In fact, if anything, the proposed amendment of section 6 should help to insure the full implementation of the act by encouraging the full participation of State agencies.

Authorizations and appropriations of section 6, Endangered Species Act

	Millions
Authorization:	
1974	2.5
1975	2.5
1976	2.5
1977	2.5
1978	[1]4.0
1979	[1]4.0
1980	[1]4.0
1981	[1]4.0
Appropriation:	
1974	0
1975	0
1976	2.0
1977	4.0
1978	4.0
1979	---
1980	---
1981	---

[1] Proposed in H.R. 6405.

STATES SIGNING COOPERATIVE ENDANGERED SPECIES AGREEMENTS

Arkansas, California, Colorado, Delaware, Florida, Maine, Maryland, Michigan, Missouri, New Jersey, New Mexico, New York, South Carolina, South Dakota, Virginia, Washington, and Wisconsin.

Mr. FORSYTHE. Mr. Speaker, I rise today in support of the legislation, H.R. 6405, which would authorize section 6 of the Endangered Species Act of 1973. This bill has three purposes. First, it would extend the authorization section for section 6 of the act from October 1, 1977, through September 30, 1981. Second, the bill would establish a funding level of $16 million which would be authorized to be appropriated during the 4-year period October 1, 1977, through September 30, 1981. Third, it would amend section 6 of the act to facilitate development of cooperative and endangered species programs with the individual States.

H.R. 6405 has the broadest bipartisan support. Since 1973 we have made a great deal of progress as a nation under the Endangered Species Act in our efforts to provide a program for the protection of endangered and threatened species and the conservation of ecosystems on which endangered and threatened species depend. Much work remains to be done. In addition to extending the authorization period of the act, this bill concentrates its attention in an area which is very important to me.

The successful development of an endangered species program depends on a good working arrangement between Federal and State agencies. Federal agencies have broad powers and perspective to carry out their authority under the act. State agencies, however, must have the physical facilities and personnel to see that the policies which are set by State and Federal interaction are properly executed. Without this strong State role, no endangered species program will be fully effective.

However, one of the greatest impediments to the development of cooperative agreements between the States and Federal Governments has been the five requirements found in section 6(c) of the act. These requirements must be met before a State can qualify for a grant in aid funds. In essence these paragraphs require States to provide blanket protection for any species listed as endangered or threatened by the Secretary.

A number of States have failed to qualify for funds under section 6 because for internal policy reasons they have been unwilling to grant their State agency the broad authority required under the present wording of the act. Under H.R. 6405, States would be able to qualify for cooperative agreement funds if they met the requirement of present paragraphs 3, 4, and 5 under section 6(c) and if the State has a plan which would result in immediate attention being given to those species most urgently in need of conservation programs.

Mr. Speaker, I urge my colleagues to join with me in approving the authorization of these much-needed funds.

Mr. MURPHY of New York. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. Murphy) that the House suspend the rules and pass the bill H.R. 6405.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

[From the Congressional Record, Oct. 18, 1977]

HOUSE CONSIDERATION AND PASSAGE OF S. 1316, AS AMENDED

Mr. **MURPHY** of New York. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1316) to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, a similar bill to H.R. 6405, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1316

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(i) of the Endangered Species Act of 1973 (16 U.S.C. 1535(i)) is amended to read as follows:

"(i) APPROPRIATION.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

"(1) $10.000,000 through the period ending September 30, 1977;

"(2) $9,000,000 to the Secretary of the Interior through the period ending September 30, 1980; and

"(3) $3,000,000 to the Secretary of Commerce through the period ending September 30, 1980.".

MOTION OFFERED BY MR. MURPHY OF NEW YORK

Mr. **MURPHY** of New York. Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. **MURPHY** of New York moves to strike out all after the enacting clause of the Senate bill (S. 1316) and to insert in lieu thereof the provisions of H.R. 6405, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "To amend the Endangered Species Act of 1973 regard the requirements for State cooperative programs thereunder and to authorize appropriations through fiscal year 1981 to carry out such programs."

A motion to reconsider was laid on the table.

A similar House bill, H.R. 6405, was laid on the table.

95TH CONGRESS
1ST SESSION

S. 1316

IN THE SENATE OF THE UNITED STATES

APRIL 20 (legislative day, FEBRUARY 21), 1977

MR. CULVER introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(i) of the Endangered Species Act of 1973 (16 U.S.C. 1535(i)) is amended to read as follows:

"(i) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

"(1) $10,000,000 through the period ending September 30, 1977.

"(2) $3,000,000 for each of the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980.".

Calendar No. 160

95th CONGRESS
1st Session

S. 1316

[Report No. 95–186]

IN THE SENATE OF THE UNITED STATES

April 20 (legislative day, February 21), 1977

Mr. Culver introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

May 16, 1977

Reported by Mr. Randolph (for Mr. Culver) with an amendment

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(i) of the Endangered Species Act of 1973 (16 U.S.C. 1535(i)) is amended to read as follows:

"(i) Appropriations.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

"(1) $10,000,000 through the period ending September 30, 1977.

~~"(2) $3,000,000 for each of the fiscal years end-~~

~~ing September 30, 1978, September 30, 1979, and September 30, 1980.”.~~

“(2) $9,000,000 to the Secretary of the Interior through the period ending September 30, 1980; and

“(3) $3,000,000 to the Secretary of Commerce through the period ending September 30, 1980.”.

Calendar No. 160

95TH CONGRESS
1ST SESSION

S. 1316

[Report No. 95–186]

A BILL

To authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

By Mr. CULVER

APRIL 20 (legislative day, FEBRUARY 21), 1977
Read twice and referred to the Committee on Environment and Public Works

MAY 16, 1977
Reported with an amendment

Calendar No. 160

95TH CONGRESS } SENATE { REPORT
1st Session } { No. 95–186

ENDANGERED SPECIES ACT AUTHORIZATIONS

MAY 16, 1977.—Ordered to be printed

Mr. RANDOLPH (for Mr. CULVER), from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1316]

The Committee on Environment and Public Works, to which was referred the bill (S. 1316), a bill to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

GENERAL STATEMENT

The purpose of this bill is to extend until September 30, 1978 the authorization under section 6(i) of the Endangered Species Act of 1973.

This section currently provides an authorization of $10 million to the Secretaries of the Interior and Commerce for assisting the States in the development of programs for the protection of threatened and endangered species of fish, wildlife, and plants. The Federal share may be as high as 66 percent for projects conducted by one State, or 75 percent for projects conducted by two or more States. To date, seventeen States have signed cooperative agreements with the Interior Department and are therefore qualified to receive grants under this provision. No State has received funding from the Commerce Department because funds have not been allocated to the National Marine Fisheries Service for this purpose.

S. 1316 would extend the authorization for section 6(i) programs through fiscal year 1980 at a rate of $9 million for the Department of the Interior and $3 million for the Department of Commerce. The

Committee hopes that the Department of Commerce will use these funds to assist the various States with programs protecting endangered and threatened marine fisheries.

The Committee is aware that considerable concern exists with respect to the implementation of the Endangered Species Act. For this reason the extension of the section 6(i) program is being approved with the understanding that the Subcommittee on Resource Protection will conduct comprehensive oversight hearings on the Act during the summer. It is hoped that S. 1316 will not be used as a vehicle for addressing these other concerns.

ROLLCALL VOTES

There were no rollcall votes during the Committee's consideration of this bill. The Committee ordered the bill reported by unanimous voice vote.

ESTIMATES OF COST

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in this report of the Committee's estimate of costs of the reported legislation, together with estimates prepared by any Federal agency. The $12 million authorization contained in S. 1316 is based on requests submitted by the Department of Interior and the Department of Commerce.

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. This report follows:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., May 13, 1977.

Hon. Jennings Randolph,
Chairman, Committee on Environmental and Public Works,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1316, a bill to amend the Endangered Species Act of 1973, to authorize appropriations through fiscal year 1980 to carry out state cooperative programs.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 13, 1977.

1. Bill number: S. 1316.
2. Bill title: To amend the Endangered Species Act of 1973 to authorize appropriations through fiscal year 1980.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 11, 1977.

4. Bill purpose: The purpose of the bill is to amend the Endangered Species Act of 1973 to authorize appropriation of $9 million to the Department of Interior and $3 million to the Department of Commerce for the period fiscal year 1978 through fiscal year 1980. This bill is authorizing legislation which requires subsequent appropriation action.

5. Budget impact:

[In millions of dollars]

Authorization level:	
Fiscal year 1978	12.
Fiscal year 1979	12.
Fiscal year 1980	12.
Fiscal year 1981	—
Fiscal year 1982	—
Estimated costs:	
Fiscal year 1978	2.3
Fiscal year 1979	3.9
Fiscal year 1980	4.5
Fiscal year 1981	1.3
Fiscal year 1982	—

The costs of this bill fall in budget subfunction 303.

6. Basis for estimate: For the purpose of this estimate, it assumed that this legislation and the necessary fiscal year 1978 appropriation legislation will be enacted prior to fiscal year 1978. The estimated costs of this legislation are based on each agency's plans for each program assuming appropriations equal to the full authorization level, and assuming historical spendout rates.

The Department of Interior spendout schedule is as follows:

[In millions of dollars]

Estimated costs:	
Fiscal year 1978	2
Fiscal year 1979	3
Fiscal year 1980	3
Fiscal year 1981	1
Fiscal year 1982	-----

The Department of Commerce spendout schedule is as follows:

Estimated costs:	
Fiscal year 1978	0.3
Fiscal year 1979	.9
Fiscal year 1980	1.5
Fiscal year 1981	.3
Fiscal year 1982	-----

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Terry Nelson and Barbara Schilberg.

10. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 5(a) of rule XXIX of the Standing Rules of the Senate requires the inclusion of a regulatory impact statement in Committee reports on proposed legislation. Regulations implementing the Endangered Species Act have been promulgated. This legislation neither adds to nor subtracts from that body of regulations.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection (4) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

[From the Congressional Record, May 25, 1977]

SENATE CONSIDERATION AND PASSAGE OF S. 1316, AS AMENDED

ENDANGERED SPECIES ACT AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 160.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

> The bill (S. 1316) to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the bill (S. 1316) which had been reported from the Committee on Environment and Public Works with an amendment on page 1, beginning with line 10, strike through and including page 2, line 2, and insert the following in lieu thereof:

> "(2) $9,000,000 to the Secretary of the Interior through the period ending September 30, 1980; and
>
> "(3) $3,000,000 to the Secretary of Commerce through the period ending September 30, 1980.".

So as to make the bill read:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 6(i) of the Endangered Species Act of 1973 (16 U.S.C. 1535(i)) is amended to read as follows:
>
> "(i) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:
>
> "(1) $10,000,000 through the period ending September 30, 1977.
>
> "(2) $9,000,000 to the Secretary of the Interior through the period ending September 30, 1980; and
>
> "(3) $30,000,000 to the Secretary of Commerce through the period ending September 30, 1980.".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

95th Congress
1st Session

SENATE

Report
No. 95-607

ENDANGERED SPECIES ACT AUTHORIZATIONS

November 29 (legislative day, November 1), 1977.—Ordered to be printed

Mr. Culver, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1316]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1316) to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is amended—

(1) by striking out the period at the end of subsection (c) and inserting in lieu thereof "; or", and by adding at the end of such subsection the following:

"that under the State program—

"(A) the requirements set forth in paragraphs (3), (4), and (5) of this subsection are complied with, and

"(B) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to subparagraph (A) and this subparagraph shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species."; and

(2) by amending subsection (i) to read as follows:

"(i) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

"(1) $10,000,000 through the period ending September 30, 1977.

"(2) $16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.".

And the House agrees to the same.

JOHN CULVER,
EDMUND S. MUSKIE,
MALCOLM WALLOP,
Managers on the Part of the Senate.
JOHN M. MURPHY,
ROBERT L. LEGGETT,
DANIEL K. AKAKA,
DAVID E. BONIOR,
BO GINN,
PHILIP RUPPE,
EDWIN B. FORSYTHE,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1316) authorizing appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, submit the following joint statement to the Senate and the House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The House amendment struck out all after the enacting clause and inserted a substitute text. The differences between the Senate bill and the House amendment are noted below, and the substitute agreed to in conference is discussed. Minor, technical and clarifying changes are not discussed.

REAUTHORIZATION OF THE SECTION 6 PROGRAM

Senate bill

The Senate bill is a simple extension of the State grant-in-aid program authorized under section 6 of the Endangered Species Act of 1973. A total of $12 million through fiscal year 1980 is provided for this purpose. Of this amount, $9 million is earmarked for the Secretary of the Interior and $3 million to the Secretary of Commerce.

House amendment

Paragraph (1) of the House amendment provides a total of $16 million through fiscal year 1981 for the section 6 program. No specific amount is made available to either the Secretary of the Interior or the Secretary of Commerce.

Conference report

The conferees agreed to adopt the House provision.

According to administration estimates, a $16 million authorization over a 4-fiscal-year period will best meet the States' projected funding needs for their endangered species conservation programs under section 6. In addition, a combined authorization for the Departments of Interior and Commerce will permit more flexibility in the expenditure of these funds.

The House and Senate conferees are dismayed that the Secretary of Commerce has not yet negotiated any cooperative agreements with the States for protecting threatened and endangered marine species under section 6. The Department of Commerce should intensify its efforts in this regard to promote increased cooperation with State programs for the conservation of threatened or endangered species. In addition, the conferees urge the Office of Management and Budget to assure that sufficient funding is provided in the budget for the Department to initiate and maintain such programs.

QUALIFICATION BY THE STATES FOR FINANCIAL ASSISTANCE

Senate bill

No provision.

House amendment

The House amendment contains language to facilitate qualification by the States for financial assistance under section 6 of the Endangered Species Act.

Before a State may enter into a cooperative agreement with, and receive financial assistance from, the Federal Government pursuant to section 6, it must have the authority to conserve all resident species of fish and wildlife which the Secretary determines to be threatened or endangered. A number of State fish and wildlife agencies do not possess such broad authority and are, therefore, not eligible for these benefits. In certain instances, a State conservation agency may have authority only to protect certain categories of species, such as vertebrates, rather than all species. Under the House amendment such a State could qualify for cooperative agreement funds if it satisfies all other requirements set forth in the act and has plans to devote immediate attention to those species most urgently in need of conservation programs.

Conference report

The conferees wish to assure that adoption of the House language does not have the effect of withdrawing protection for species listed by the Secretary. Therefore, the conference committee has agreed to a modification which guarantees that applicable prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1) of the Endangered Species Act with respect to the taking of resident endangered or threatened species remain in effect when a State enters into a cooperative agreement under the alternative language of the House amendment.

JOHN CULVER,
EDMUND S. MUSKIE,
MALCOLM WALLOP,
Managers on the Part of the Senate.
JOHN M. MURPHY,
ROBERT L. LEGGETT,
DANIEL K. AKAKA,
DAVID E. BONIOR,
BO GINN,
PHILIP RUPPE,
EDWIN B. FORSYTHE,
Managers on the Part of the House.

[From the Congressional Record, Nov. 29, 1977]

SENATE AGREEMENT TO CONFERENCE REPORT

ENDANGERED SPECIES ACT AUTHORIZATIONS—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Iowa (Mr. Culver), I submit a report of the committee of conference on S. 1316, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1316) to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

[From the Congressional Record, Nov. 30, 1977]

HOUSE AGREEMENT TO CONFERENCE REPORT

CONFERENCE REPORT ON S. 1316, ENDANGERED SPECIES ACT AUTHORIZATIONS

Mr. MURPHY of New York. Mr. Speaker. I ask unanimous consent for the immediate consideration of the conference report on the bill (S. 1316) to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. MURPHY of New York. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the statement.

The SPEAKER pro tempore. The gentleman from New York (Mr. Murphy) and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 30 minutes each.

The Chair recognizes the gentleman from New York (Mr. Murphy).

Mr. MURPHY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report on S. 1316 adopts all of the provisions of the House-passed legislation with only one minor modification. As agreed by the conferees, the bill would authorize $16 million over 4 years to fund State cooperative endangered species programs.

Under the Endangered Species Act, the Federal Government is authorized to enter into cooperative agreements with individual States that develop a qualifying endangered species program. Once a State has developed an acceptable endangered species program, it is eligible to receive Federal matching funds to carry out its program. In the past, these matching funds have been used for such activities as conducting bald eagle surveys and propagating falcons for release into the wild.

In addition, S. 1316 amends the requirements that States must meet before they become eligible for these matching funds. This change in law was added by the House and agreed to by the conferees in an attempt to encourage participation in the endangered species program by the large number of States who have not signed agreements with the Federal Government.

The conferees have added only one small modification to the bill as passed by the House. This modification simply insures that the prohibitions in the Endangered Species Act will continue to apply to resident endangered and threatened species in those States qualifying for Federal funding under the new qualifying requirements specified in the bill. Without this modification, some endangered species could have been left unprotected by both the provisions of the Endangered Species Act and the provisions of the State endangered species program.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, this comes at a time when we have not had much preparation for it. I do not know whether the committee went into the situation that we faced in the Public Works appropriation hearings and as well as in the Interior Committee appropriation hearings, but it developed upon those hearings that the present act, in my opinion, at least, the Department of the Interior or parts thereof had held species endangered without any evidence that it was a species and not a variety.

Further hearings disclosed that in the Tellico Dam they had to seek out the so-called snail darter, not to save the species, but to find one whereby they could stop a dam within 5 percent of being completed and which would have furnished energy to 30,000 homes. In the south end of my State where I live they held up an interstate highway because of the sandhill crane. It develops that the sandhill crane is in many parts of the United States. We have had them declared a species endangered without determining whether they are a species of a variety, as history will show, without any evidence that they might exist in other States, to see whether they were plentiful.

Down in Tennessee they went to the bottom of the stream and found a darter, where the citizens who filed an injunction could not identify or separate them from two other darters. The only thing we could see as Members of Congress was a little slight dot for two of them, what you would call a minnow. Nobody heard of them until they set out to stop the dam.

I wonder if the gentleman has made an effort to see what damage they are doing to the country's ability to look after itself in the name of protecting something that is worthwhile.

As I said earlier, we have had this endangered species from the time of the dinosaurs, or we would not be here.

They are not carrying out the law as it should be according to the evidence before us, so I have understood.

Can the gentleman give any information about what they have done and whether they are going to put the country back as it was at the time of the Indians?

Mr. **Murphy** of New York. Mr. Speaker, I thank the gentleman for bringing this up. Of course, the gentleman's inquiry refers to section 7 of the act and what we are dealing with here is section 6 of the act. We do not in any way in this legislation deal with the designation of critical habitat under section 7 of the Endangered Species Act. It is under section 7 that the Sixth Circuit Court of Appeals enjoined the completion of the Tellico Dam. This particular conference report has nothing to do with the problems that some public works projects face as a result of the Endangered Species Act.

Mr. **Whitten**. Mr. Speaker, if the gentleman will yield further, I have high regard for my friend, the gentleman from New York. I just wonder if the gentleman would not be better spending his time going to work on section 7 and straightening it out before we write some other sections?

Mr. **Murphy** of New York. We have already started working on section 7. The committee has had the General Accounting Office do a study of the Tellico Dam situation. It has also directed a set of questions to the Department of the Interior in order to determine the potential impact of section 7 on public works programs across the country. We do plan to deal with the critical habitat question early next session.

Mr. **Whitten**. Mr. Speaker, if the gentleman will yield further, those things that are dear to us and valuable to us we are in favor of, but where this is being used to stop the development of this country, we cannot afford it, in view of the present situation.

PARLIAMENTARY INQUIRY

Mr. **Whitten**. Mr. Speaker, a parliamentary inquiry.

The **Speaker** pro tempore. The gentleman will state it.

Mr. **Whitten**. Mr. Speaker, does it require unanimous consent for the consideration of the conference report?

The **Speaker** pro tempore. The Chair is advised that unanimous consent has already been obtained for the consideration of the conference report.

Mr. **Whitten**. I am sorry, Mr. Speaker, I was not aware that was done here. I certainly would hope that the gentleman would defer this until we have a meeting of the minds between the committees that deal with it, because it is doing untold damage by being misconstrued in carrying out what I understand are the terms of the law.

Mr. **Murphy** of New York. Mr. Speaker, I want the gentleman to know that we are specifically addressing ourselves to section 7. Next year the remainder of the Endangered Species Act including section 7 will be reauthorized. We want specific answers to the specific questions that the gentleman has just raised and this conference report has nothing to do with the inquiry of the gentleman.

Mr. Whitten. Mr. Speaker, I would like to insist that we read the statement on the part of the managers.

The Speaker pro tempore (Mr. Foley). The Chair wishes to advise the gentleman from Mississippi that unanimous consent was obtained for the consideration of the conference report, to read the statement of the managers in lieu of the report, and to dispense with further reading of the statement of the managers.

Mr. Whitten. I thank the Speaker.

Mr. Watkins. Mr. Speaker, will the gentleman yield?

Mr. Murphy of New York. I yield to the gentleman from Oklahoma.

Mr. Watkins. Could the gentleman explain to me on the amendment here about the provision requiring an acceptable endangered species program be developed by the States? It has to be acceptable to whom, and to what group or agency?

Mr. Murphy of New York. The States are required to initiate a conservation program for those species most in need of protection before than can qualify for matching funds.

Mr. Watkins. If the gentleman will yield further, what concerns me about this provision is that, like the gentleman from Mississippi, I have a cousin or mutation of the snail darter, a black darter called the leopard darter, in my district which blocked construction of a dam. To our knowledge, it is a mutation, about three or four crosses away. We cannot figure out how it can be endangered. I am deeply concerned about who is saying what about this endangered species in my State, whether it is the Federal Government or whom.

Mr. Murphy of New York. The Department of the Interior determines whether a species is threatened or endangered after input from biologists and the public at large.

I might say that we could use some cooperation from the Fish and Wildlife Service. They recently tried to transfer the snail darter upstream to another habitat where it probably could have survived but the Fish and Wildlife Service provided nets that were contaminated and they did away with the snail darters under transfer. That is the type of agency cooperation we are trying to prevent, but I want my colleague from Oklahoma, and also my colleague from Mississippi, to know that we understand this problem. We are not going to impede programs because some people may feel that a species is endangered. We are going into this whole question in section 7, and the entire House will have the opportunity next year in the authorization process to bring this up. We do not impact on those areas in this section 6 conference report.

Mr. Watkins. I am deeply concerned about this because the power of this particular agency has grown here. I think there should be some very close scrutiny because they are about to stop any type of public works project or any program receiving Federal funds. There is a serious possibility that a mutation or long-distant cousin of the snail darter or something in my district will prevent any type of economic growth for our people.

Mr. Murphy of New York. The intent is not to impede public works projects, but to protect bona fide endangered species. We are going into that whole question of endangered species and the definition of them in section 7 next year. This conference report does not deal with that issue at this time.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield further?

Mr. MURPHY of New York. I will be happy to yield.

Mr. WHITTEN. As the gentleman knows, we had no advance notice, and of course in the closing days we are accustomed to that happening—otherwise, I would have been better prepared to have made an objection had I been on the floor. But, I would ask the gentleman if, in his contemplation, endangered species is something that is sought for the purpose, not of protecting species, but of finding one that comes under the provisions of the law so as to stop a dam which is 95 percent complete, and for which $96 million has already been spent, to provide energy for 30,000 homes. In this instance, they went out and found something that was not known to exist.

I do not see how they could say it was endangered until they made a thorough survey over the United States.

And may I say, for the record, that the witness in the courtroom, when the judge issued the injunction, could not identify the snail from some others.

I just hope that we can call on our friend to help straighten this matter out so that our country can continue to exist and continue to to prosper and to grow.

Mr. MURPHY of New York. In no way would the snail darter come under any aspect of this conference report, because we are dealing strictly with section 6. Section 7 will be dealt with separately next year in the authorization. The committee and the members of the committee from Tennessee were very careful to insure that this question was raised in the appropriate hearings.

Mr. FORSYTHE. Mr. Speaker, I rise in support of the conference report on S. 1316, a bill to amend the Endangered Species Act of 1973 regarding the requirements for State cooperative programs and to authorize appropriations through fiscal year 1981 to carry out such programs.

The Senate conferees have agreed to recommend that the Senate recede from its disagreement to the amendment of the House which enlarged and strengthened the role of States in our Nation's endangered species program. This is a very positive step, as the successful development of our Nation's overall endangered species program depends on the good working arrangement between Federal and State agencies. Without the strong State role added to the bill by the House, no endangered species program could ever be fully realized.

The only real change in the House-passed version of the bill which has come out of the conference is one which I can fully support. During the conference it became apparent that the protection of some species might be inadvertently lost when a State program became effective. The change brought about in conference will insure that all endangered species will continue to be protected.

Mr. Speaker, I urge my colleagues to join with me in approving this authorization so that funds are available for this much-needed program.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. FORSYTHE. I yield to the gentleman from Mississippi.

Mr. **Whitten**. I thank the gentleman for yielding.

Mr. Speaker, the Committee on Appropriations, may I say, has provided funds with which to transfer the so-called endangered species from one point to the other. And the act, as I interpret it—speaking off the cuff, because I did not know this was coming up—provides that they be protected and not used to prevent the development of the country. So if the act were carried out as it reads, if the courts would so interpret it, it would be one thing; but as I point out, when we have someone making a study, trying to find something to be used to stop a project, something that was not known to exist, something that there is no evidence now that it is not of a different variety, then we can see that the act itself is being misused.

Mr. Speaker, I hope the gentleman will devote his attention to seeing that this is carried out as it is now, and then we would not have anything like the damage that has occurred.

Mr. **Forsythe**. Mr. Speaker, that is the issue, and, as I say, that matter will apparently go all the way to the Supreme Court. But then the legislative process will follow that, as the chairman of the committee said, when we look at the rest of the legislation.

Mr. **Watkins**. Mr. Speaker, will the gentleman yield?

Mr. **Forsythe**. I yield to the gentleman from Oklahoma.

Mr. **Watkins**. Mr. Speaker, what concerns me is the fact that we have stated here that the States must develop an acceptable program.

A program acceptable to whom? The Federal Government, the Federal bureaucracy, which has stopped many of us in the States flat in our tracks from developing opportunities for our people?

Mr. **Forsythe**. Mr. Speaker, for the State to get a cooperative program, it would deal with the Department of the Interior and the Department of Commerce, yes, where the species would be, for example, a marine mammal. There is a split jurisdiction by species, and obviously the Federal agency has to go by the Federal law in terms of this: Does that State cooperative agreement comply with the Federal statute?

But this piece of legislation even helps make that more possible, because one of the problems in the existing law, without this legislation, was that a State had to have a program to cover all species, whether they were resident or involved or not. This permits them to protect those species under an agreement with the Federal Government that are involved in that single State.

Mr. **Murphy** of New York. Mr. Speaker, will the gentleman yield?

Mr. **Forsythe**. I yield to the chairman of the committee.

Mr. **Murphy** of New York. Mr. Speaker, I want to assure my colleague, the gentleman from Oklahoma (Mr. Watkins), that the purpose of this legislation is to bring the 33 States into this program, and get them to take over the protection of resident endangered species.

We have broadened the program, and we have added more money so that the States will be able to protect endangered species and have the funds to do it. Thus they will not have to rely on what is minimal funding in many States.

That is the very thrust of this legislation, and it is not meant to impede any project. There is no project that would be impeded by this legislation.

As I assured the gentleman from Mississippi (Mr. Whitten)—and I refer to section 7—what we are doing is simply broadening the power of the States to, No. 1, get funding, and, No. 2, to be responsible for the endangered species within the States.

Mr. WATKINS. Mr. Speaker, will the gentleman yield further?

Mr. FORSYTHE. I yield to the gentleman from Oklahoma.

Mr. WATKINS. Mr. Speaker, the concern I have is that in the State of Oklahoma a water project was halted. Under the guise of the Endangered Species Act we were protecting two species, one called the snail darter and the other one called the leopard darter, a mutation. They stopped the project. They did this, we understood, to save the environment from the results of the project.

The choice was exercised by the Federal bureaucracy, and they did not allow this project to be completed. This was done by the choice of those individuals in the Federal Government and not by the choice of the people in that area of the country, that area of the State of Oklahoma, and it was impossible to continue that project.

Mr. FORSYTHE. Mr. Speaker, as the committee chairman has said, these issues are not dealt with in the legislation we are addressing today. Those are issues that will be dealt with when we look at the rest of the Endangered Species Act. That is the time we will be anxious to hear from the gentleman further.

Mr. LEGGETT. Mr. Speaker, I urge the adoption of the conference report S. 1316. The conferees have agreed to all of the provisions of the legislation as passed by the House. They have merely added some modifying language which plugs a potential loophole in the law.

Under the existing law, when a State signs a cooperative agreement with the Federal Government covering resident wildlife, the prohibitions in the Endangered Species Act are waived. This makes a good deal of sense since the continuation of Federal prohibitions would only duplicate the protection afforded under the cooperative agreement.

S. 1316, however, changes the existing law slightly by no longer requiring blanket protection for each and every species listed by the Federal Government. Thus, in some instances, there may be a need for continued Federal protection for those species not covered by the cooperative agreement. The modification adopted by the conferees guarantees that those species not covered by the cooperative agreement will continue to receive protection under the Endangered Species Act.

Mr. MURPHY of New York. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

MOTION OFFERED BY MR. MURPHY OF NEW YORK

Mr. MURPHY of New York. Mr. Speaker, I offer a motion.

The Clerk read as follows:

> **Mr. MURPHY of New York moves that the House recede from its amendment to the title of the Senate bill, S. 1316.**

The motion was agreed to.

A motion to reconsider was laid on the table.

[From the Congressional Record, Dec. 7, 1977]

S. 1316 PRESENTED TO THE PRESIDENT

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, December 7, 1977, he presented to the President of the United States the following enrolled bills:

S. 1316. An act to authorize appropriations for fiscal years 1978, 1979, and 1980 to carry out State cooperative programs under the Endangered Species Act of 1973; and

* * * * * * *

ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Fish and Wildlife Miscellaneous, Part 1. Hearings, 95th Congress, 1st session. Washington, U.S. Government Printing Office, 1977. 383 p. Hearings on Endangered Species Authorization held Mar. 22, 1977; hearings on Amendments held on Oct. 26, 1977. "Serial No. 95-18."

Hearings to consider six bills relating to various aspects of fish and wildlife conservation, including:

H.R. 4741, to extend through fiscal year 1980 Endangered Species Act of 1973 cooperative programs with State for endangered species conservation.

H.R. 4658, to exempt from Endangered Species Act of 1973 import prohibitions on antique articles composed of endangered or threatened species.

Hearing of March 22, 1977 includes submitted statements and testimony from: J. S. Gottschalk (IAFWA), L. A. Greenwalt (FWS), J. W. Gehringer (NMFS).

Hearing of October 26, 1999 includes submitted statements and testimony from: L. Boggs (Rep, LA), G. A. Bertrand (CEQ), L. A. Greenwalt (FWS), J. W. Gehringer (NMFS).

U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Resource Protection. Authorization for the Endangered Species Act and for Three Wildlife Refuges. Hearings, 95th Congress, 1st session, Apr. 21, 1977. Washington. U.S. Government Printing Office, 1977. 59 p. "Serial No. 95-H19."

Hearings to consider two bills including:

S. 1316, to extend authorization of appropriations through fiscal year 1980 for Federal-State cooperative programs under the Endangered Species Act of 1973.

Hearing testimony includes: L. A. Greenwalt (FWS), J. W. Gehringer (NMFS), J. S. Gottschalk (IAFWA).

U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Resource Protection. Endangered Species Act Oversight. Hearings, 95th Congress, 1st session, July 20, 21, and 28, 1977. Washington, U.S. Govt. Print. Off., 1977. 1025 p. "Serial no. 95-H33"

Hearings in implementation of the Endangered Species Act of 1973, which authorizes a national program for conservation of endangered or threatened species of fish, wildlife and plants, and directs the Interior and Commerce Departments to identify endangered species and issue appropriate regulations for their protection.

Focusses on ESA Section 7 provisions requiring protection of critical habitat, and prohibiting damage to critical habitat by federally assisted projects. At time of hearing, the federally assisted TVA Tellico Dam Project completion on the Little Tennessee River, Tenn. had been interdicted by Interior Department as dam closure threatened critical habitat of the snail darter fish.

Includes witnesses' prepared statements, submitted statements and correspondence, and submitted responses to questions, including:

a. Michigan DNR, "Michigan's Endangered and Threatened Species Program" with annotated species lists;

b. TVA, weekly construction force reports, Tellico Dam Project, 1974–76.

c. TVA, "Tellico Project Economic Analysis" Sept. 22, 1971;

d. TVA, "Comments on Revised GAO Report on the Tellico Project" Aug. 1977;

e. TVA, "Snail Darter Conservation Program Situation Assessment. Population Age Structure and Distribution: Little Tennessee and Hiwasee Rivers" Feb. 1977.

Includes testimony from Tennessee Representatives, Administration and Government agency personnel, environmental organizations and others; and discusses arguments pro and con completing Tellico, and amending the Endangered Species Act.

PART IV

ENDANGERED SPECIES ACT AMENDMENTS OF 1978, PUBLIC LAW 95-632

BACKGROUND

The major purposes of this legislation were to reauthorize appropriations for implementation of the Endangered Species Act of 1973, and to amend the Act to establish a procedure for the application for, and review of, an exemption from the prohibition against agency actions which jeopardize endangered or threatened species or their critical habitat. Other provisions of the law were intended to improve the process whereby species or their critical habitats are designated. These include requirements for improved public notice and hearings, for analysis of the economic impact of critical habitat designations, and for the periodic review of previously listed species. Proposals to list any new species as threatened or endangered must now contain specification of critical habitat proposed for designation for final listing.

The appropriation authorization extension provided for in 1976 (PL 94-325) expired September 30, 1978. Oversight hearings held by the Senate Subcommittee on Resource Protection in July 1977 (Serial 95-H33) revealed additional substantive issues connected with the Act's administration which prompted amendment to the original Act. S. 2899 was introduced by Mr. Culver and others on April 12, 1978 and referred to the Senate Committee on Environment and Public Works. Hearings on the bill were held by the Subcommittee on Resource Protection on April 13 and 14 (Serial 95-60). Testimony indicated that a substantial number of Federal actions currently underway may result in irresolvable conflict within the provisions of the Act. It was feared that the number of such conflicts may increase significantly in the future as the Fish and Wildlife Service continued to list additional species and critical habitats. The Committee felt these circumstances illustrated the need for an amendment to the Act which would provide flexibility in its administration, while maintaining protection for threatened and endangered species. S. 2899 was reported out of committee with amendment on May 15, 1978 (S. Rept. 95-874). The bill was further amended during its three-day consideration on the Senate Floor, and was finally passed on July 19, 1978.

H.R. 10883, a bill to authorize appropriations to carry out the Endangered Species Act during fiscal years 1979 through 1981 was introduced on February 9, 1978 by Mr. Murphy of New York and others. This simple authorization measure was reported to the House by the Merchant Marine and Fisheries Committee on March 31, 1978. The Committee did not seek consideration of this measure in the House, however, until formal oversight hearings on the Endangered Species Act could be conducted.

89-690 O - 82 - 42

Between May 24 and June 28, 1978, the Committee conducted eight days of oversight hearings on the Act (Serials 95–39 and 95–40), receiving testimony from nearly seventy witnesses. Following these hearings, Mr. Leggett introduced H.R. 13807. This bill proposed a Presidential exemption procedure for projects which come into conflict with threatened and endangered species. H.R. 13807 was considered by the Subcommittee in open markup sessions on August 15, 16, and 17, and September 11 and 13. On September 13, the Subcommittee unanimously adopted an amendment in the nature of a substitute to H.R. 13807 and ordered the bill, as amended, reported to the full Committee in the form of the clean bill, H.R. 14104. This clean bill was introduced on September 18, 1978 by Mr. Leggett and Mr. Murphy and 15 other members of the Committee.

The Committee considered H.R. 14104 in open markup session and unanimously ordered the bill reported to the House with amendments on September 25, 1978 (H. Rept. 95–1625). H.R. 14104 represented the Committee's attempt to retain the integrity of the Endangered Species Act, while introducing some flexibility into the Act to permit some exemptions from certain of its requirements.

The exemption procedure provided in H.R. 14104, as reported by the Committee paralleled the exemption procedure adopted by the Senate in S. 2899. In both versions, the final determination of whether a project should receive an exemption from the Act would be made by a cabinet level committee. H.R. 14104 differed from S. 2899 in the make-up of the cabinet level committee, votes needed for an exemption, and the hearing process leading to the exemption decision by the cabinet level committee. In addition, H.R. 14104 addressed a number of other issues not considered by the Senate. These included: the lack of notice to local communities affected by a proposed listing of a species or the designation of critical habitat; and the failure to conduct public hearings in the local area on a proposed listing.

H.R. 14104 passed the House on October 14, 1978. The House adopted a number of amendments to the bill including specific project exemptions for the Tellico Dam and Reservoir in Tennessee and the Grayrocks Project in Wyoming. The House inserted the language of H.R. 14104, as amended, into S. 2899 and requested a conference with the Senate.

The House and Senate conferees met on October 4 to resolve the differences between the Senate bill and the House amendments do it. Both the House and the Senate agreed to the conference report on S. 2899 on the same day, October 14 (H. Rept. 95–1804).

As finally passed by both Houses, S. 2899 would do the following:

1. Require Federal agencies to insure that their actions do not jeopardize the continued existence of an endangered species or adversely modify its critical habitat.

2. Establish a procedure under which Federal agencies can be considered for exemptions from the Act. The Federal agency, the Governor, or the permit and license applicant can apply for an exemption.

a. Exemption applications would initially be considered by a three member review board composed of an individual appointed by the Secretary of the Interior; an individual nominated by the Governor of the affected State and appointed by the President; and an Administrative Law Judge.

b. The review board would initially determine whether the Federal agency had consulted in good faith with the Department of the Interior and had attempted to resolve the conflict.

c. Having made a positive determination that the agency consulted in good faith, the review board would proceed to conduct a formal adjudicatory hearing on the merits of any exemption. The review board would make a report to the Endangered Species Committee within 180 days.

d. An Endangered Species Committee was established to rule on applications for exemption from the Act. The Committee would be composed of:

(1) Secretary of Agriculture;

(2) Secretary of the Army;

(3) Chairman of the Council of Economic Advisors;

(4) Administrator of Environmental Protection Agency;

(5) Secretary of the Interior (Chairman);

(6) Administrator of National Oceanic and Atmospheric Administration; and

(7) Individual nominated by the Governor of the affected State and appointed by the President.

e. The Committee could grant an exemption if five of the seven members find that:

(1) there are no reasonable or present alternatives to the agency action;

(2) the benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

(3) the action is of national or regional significance.

f. The Tellico Dam project in Tennessee and the Grayrocks project in Wyoming would receive an expedited consideration by the Endangered Species Committee.

g. At the time of an exemption determination, the Committee must also establish reasonable mitigation and enhancement measures as necessary to mitigate the adverse effects of the agency action upon the endangered species, or critical habitat concerned.

h. Three exceptions to the exemption review process are provided for:

(1) The Secretary of State may prohibit exemption consideration for actions that would violate any international treaty obligations of the United States;

(2) The Secretary of Defense can exempt actions from the provisions of section 7 if he finds that the actions are necessary for national defense;

(3) The President may grant exemptions for declared major disaster areas.

i. An exemption shall not be considered a major Federal action for purposes of the National Environmental Policy Act of 1969.

j. The procedure for judicial review of Committee decisions was set forth.

3. Revise the notice procedures in the Act to improve public notice of proposals to list species as endangered or threatened and designate critical habitat.

4. Require public hearings in areas affected by a designation of critical habitat.

5. Establish a grant-in-aid program for States which have developed an adequate and active program for the conservation of endangered and threatened plants.

6. Revise the penalty provisions of the Act by reducing the strict liability penalty for others than importers and exporters to $500, making criminal violations of the Act a general rather than a specific intent crime, and subjecting importers and exporters of fish and wildlife and plants to strict liability penalties of up to $10.000.

7. Provide the Secretary of Agriculture with authority to acquire land for the conservation of endangered and threatened species with Land and Water Conservation Funds;

8. Provide exceptions from the Act's requirements for the progeny of legally held captive raptors and antique articles made before 1830.

9. Revise the procedures to be followed by the Secretary of the Interior in issuing regulations under the Endangered Species Act of 1973 and direct the Secretary to review the endangered species list at least once every five years and to publish, in the Federal Register, any final regulation which adds a species to the endangered list, not later than two years after the date of the regulations.

10. Authorize appropriations of $40.4 million through March 31, 1980 to carry out the purposes of the Act.

11. Require the Secretary of the Interior to develop and implement plans for the conservation and survival of endangered and threatened species.

12. Direct the Secretary in determining the critical habitat of any endangered or threatened species to consider the economic impact of specifying the area as part of a critical habitat, unless it is determined that failure to designate such an area as critical habitat will result in the extinction of the species.

The bill was signed into law (P.L. 95-632) on November 10, 1978.

CHRONOLOGY—PUBLIC LAW 95-632

April 12, 1978—S. 2899 introduced and referred to Senate Committee on Environment and Public Works.

May 15, 1978—S. 2899 reported, with amendment, to Senate by the Committee on Environment and Public Works, S. Rept. 95-874.

July 17, 1978—S. 2899 considered in Senate.

July 18, 1978—S. 2899 considered in Senate.

July 19, 1978—S. 2899 considered in Senate; passed with amendments.

September 18, 1978—H.R. 14104 introduced and referred to the Committee on Merchant Marine and Fisheries.

September 25, 1978—H.R. 14104 reported, with amendment, to House by the Committee on Merchant Marine and Fisheries, H. Rept. 95-1625.

October 14, 1978—H.R. 14104 passed House with amendment.

October 14, 1978—S. 2899 passed House, with amendment, in lieu of H.R. 14104.

October 14, 1978—House agreed to Conference Report (H. Rept. 95-1804).

October 14, 1978—Senate agreed to Conference Report (H. Rept. 95-1804).

October 26, 1978—S. 2899 presented to the President.

November 10, 1978—S. 2899 signed into law (Public Law 95-632).

Public Law 95-632
95th Congress

An Act

To amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such actions.

Nov. 10, 1978
[S. 2899]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

Endangered Species Act Amendments of 1978.
16 USC 1531 note.

SEC. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

Definitions.

(1) by inserting before paragraph (1) thereof the following new paragraph:

"(1) The term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction.";

(2) by inserting after paragraph (4) as redesignated by paragraph (7) of this section the following new paragraph:

"(5)(A) The term 'critical habitat' for a threatened or endangered species means—

"(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

16 USC 1533.

"(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

"(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.";

(3) by inserting after paragraph (6), as redesignated by paragraph (7) of this section the following new paragraph:

"(7) The term 'Federal agency' means any department, agency, or instrumentality of the United States.";

(4) by inserting after paragraph (10), as redesignated by paragraph (7) of this section, the following new paragraphs:

"(11) The term 'irresolvable conflict' means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, after consultation as required in section 7(a) of this Act, completion of such action would (A) jeopardize the continued existence of an endangered or threatened species, or (B) result in the adverse modification or destruction of a critical habitat.

Post, p. 3752.

"(12) The term 'permit or license applicant' means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.";

Infra.

(5) by striking out paragraph (16), as redesignated by paragraph (7) of this section, and inserting in lieu thereof the following:

"(16) The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.";

(6) by striking out paragraph (18), as redesignated by paragraph (7) of this section, and inserting in lieu thereof the following:

"(18) the term 'State agency' means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State."; and

(7) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively, by redesignating paragraph (4) as paragraph (6), by redesignating paragraphs (5) through (7) as paragraphs (8) through (10), respectively, and by redesignating paragraphs (8) through (16) as paragraphs (13) through (21), respectively.

SEC. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

Review.

"SEC. 7. (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

16 USC 1533.

"(b) SECRETARY'S OPINION.—Consultation under subsection (a) with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. The Secretary shall suggest those reasonable and

Statement and
summary.

prudent alternatives which he believes would avoid jeopardizing the continued existence of any endangered or threatened species or adversely modifying the critical habitat of such species, and which can be taken by the Federal agency or the permit or license applicant in implementing the agency action.

"(c) Biological Assessment.—To facilitate compliance with the requirements of subsection (a), each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

"(d) Limitation on Commitment of Resources.—After initiation of consultation required under subsection (a), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid jeopardizing the continued existence of any endangered or threatened species or adversely modifying or destroying the critical habitat of any such species.

Endangered Species Committee.

"(e)(1) Establishment of Committee.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

Applications, review.

"(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a) of this section for the action set forth in such application.

Membership.

"(3) The Committee shall be composed of seven members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Chairman of the Council of Economic Advisors.

"(D) The Administrator of the Environmental Protection Agency.

"(E) The Secretary of the Interior.

"(F) The Administrator of the National Oceanic and Atmospheric Administration.

Presidential appointment.

"(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

"(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

Travel allowance.

"(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

Quorum.

"(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

Chairman.

"(B) The Secretary of the Interior shall be the Chairman of the Committee.

Meetings.

"(C) The Committee shall meet at the call of the Chairman or five of its members.

"(D) All meetings and records of the Committee shall be open to the public.

"(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

"(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

"(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

5 USC 552a note.

"(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

"(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

"(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

Rules and regulations.

"(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

Subpenas.

"(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(10) Except in the case of a member designated pursuant to paragraph (3)(G) of this subsection, no member shall designate any person to serve as his or her representative unless that person is, at the time of such designation, holding a Federal office the appointment to which is subject to the advice and consent of the United States Senate. In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

Applications, submittal.

"(f) REGULATIONS.—Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include, but not be limited to—

"(1) a description of the consultation process carried out pursuant to subsection (a) of this section between the head of the Federal agency and the Secretary; and

"(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) of this section.

"(g) APPLICATION FOR EXEMPTION AND CONSIDERATION BY REVIEW BOARD.—(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a), the Secretary's opinion under subsection (b) indicates that the agency action may jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify the critical habitat of such species. An application for an exemption shall be considered initially by a review board in the manner provided in this subsection, and shall be considered by the Endangered Species Committee for a final determination under subsection (h) after a report is made by the review board. The applicant for an exemption shall be referred to as the 'exemption applicant' in this section.

"(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the completion of the consultation process. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

Notification.

"(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the review board to be established under paragraph (3) and to the Endangered Species Committee for consideration of such application.

Review board, establishment.

"(3)(A) A review board shall be established for purposes of considering an application for exemption and submitting a report to the Endangered Species Committee under this subsection as follows:

"(i) One individual shall be appointed to the board by the Secretary not later than 15 days after an application is submitted pursuant to paragraph (2).

Appointment.

"(ii) One individual shall be appointed to the board by the President, not later than 30 days after an application is submitted pursuant to paragraph (2) and after consideration of any recommendations received pursuant to paragraph (2)(B). An individual appointed by the President under this subparagraph shall be a resident of a State, if any, in which the agency action will be, or is being, carried out.

"(iii) One administrative law judge shall be selected to serve on the board by the Civil Service Commission in the same manner as administrative law judges are selected under section 3344 of title 5 of the United States Code to be detailed to an agency which occasionally or temporarily is insufficiently staffed with administrative law judges. The use by the review board of such an administrative law judge shall be on a reimbursable basis.

Compensation.

"(B) Members of a review board who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the board. All other members shall be entitled to receive an amount not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day during which they are engaged in the actual performance of duties vested in the board. While away from their homes or regular places of business in the performance of services for a review board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

5 USC 5332 note.
Per diem and travel allowances.

"(4) The Secretary shall submit the application to the review board immediately after its appointment under paragraph (3), and the Secretary shall submit to the review board, in writing, his views and recommendations with respect to the application within 60 days after receiving a copy of any application under paragraph (2).

Determination.

"(5) It shall be the duty of a review board appointed under paragraph (3) to make a full review of the consultation carried out under subsection (a), and within 60 days after its appointment or within such longer time as is mutually agreed upon between the exemption applicant and the Secretary, to make a determination, by a majority vote, (1) whether an irresolvable conflict exists and (2) whether such exemption applicant has—

"(A) carried out its consultation responsibilities as described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which will avoid jeopardizing the continued existence of an endangered or threatened species or result in the adverse modification or destruction of a critical habitat;

"(B) conducted any biological assessment required of it by subsection (c); and

"(C) refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

Any determination by the review board that an irresolvable conflict does not exist or that the exemption applicant has not met the requirements of subparagraph (A), (B), or (C) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

5 USC 701 *et seq.*

"(6) If the review board determines that an irresolvable conflict exists and makes positive determinations under subparagraphs (A), (B), and (C) of paragraph (5), it shall proceed to prepare the report to be submitted under paragraph (7).

Report to Committee.

"(7) Within 180 days after making the determinations under paragraph (6), the review board shall submit to the Committee a report discussing—

"(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

"(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

"(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee.

"(8) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

"(9) In carrying out its duties under this subsection, a review board may, and any member of a review board if so authorized by the review board, may—

"(A) sit and act at such times and places, take such testimony, and receive such evidence, as the review board deems advisable;

5 USC 552a note.

"(B) subject to the Privacy Act of 1974, request of any Federal agency or applicant information necessary to enable it to carry out such duties, and upon such request the head of such Federal agency shall furnish such information to the review board; and

"(C) use the United States mails in the same manner and upon the same conditions as a Federal agency.

"(10) Upon request of a review board, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the review board to assist it in carry out its duties under this section.

"(11) The Administrator of the General Services Administration shall provide to a review board, on a reimbursable basis, such administrative support services as the review board may request.

"(12) All meetings and records of review boards shall be open to the public.

Determination.

"(h) EXEMPTION.—(1) The Committee shall make a final determination whether or not to grant an exemption within 90 days of receiving the report of the review board under subsection (g)(7). The Committee shall grant an exemption from the requirements of subsection (a) for an agency action if, by a vote of not less than five of its members voting in person—

"(A) it determines on the record, based on the report of the review board and on such other testimony or evidence as it may receive, that—

"(i) there are no reasonable and prudent alternatives to the agency action;

"(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(iii) the action is of regional or national significance; and

"(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

5 USC 701 *et seq.*

"(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under subsection (h) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action: *Provided*, That a biological assessment has been conducted under subsection (c).

"(B) An exemption shall not be permanent under subparagraph (A) if the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of the species. If the Secretary so finds, the Committee shall determine within 30 days after such finding whether to grant an exemption for the agency action notwithstanding the Secretary's finding.

Certification.

"(i) Review by Secretary of State.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

Publication in Federal Register.

Exemption.

"(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

"(k) Special Provisions.—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

"(l) Committee Orders.—(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

"(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

Report to Council on Environmental Quality.

Report availability, publication in Federal Register.

"(m) Notice.—The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a) of this section.

16 USC 1540.

"(n) Judicial Review.—Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

16 USC 1532.
5 USC 701 *et seq.*

"(o) Exception on Taking.—Notwithstanding sections 4(d) and 9(a) of this Act or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (h) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

16 USC 1533, 1538.

"(p) Exemptions in Presidentially Declared Disaster Areas.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding

42 USC 5121 note.

42 USC 5171, 5172.

any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

"(q) Authorization.—There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for fiscal year 1979, and not to exceed $300,000 for the period beginning October 1, 1979, and ending March 31, 1980. The Chairman of the Committee shall report to the Congress before the end of fiscal year 1979 with respect to the adequacy of the budget authority contained in this subsection.".

Report to Congress.

Sec. 4. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b) Species Held in Captivity or Controlled Environment.—" and by adding the following new paragraph:

"(2)(A) This section shall not apply to—

"(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

"(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

Regulation.

"(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

Sec. 5. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsections:

16 USC 1533.

"(h) Certain Antique Articles.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article (other than scrimshaw) which—

"(A) was made before 1830;

"(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

"(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

"(D) is entered at a port designated under paragraph (3).

Documentation submittal, regulations.

"(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

Port designation, consultation.

"(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

Ante, p. 3751.

"(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

"(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4; 16 USC 1533.

"(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and *Infra.*

"(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

Exemption.

"(i)(1) TELLICO AND GRAYROCKS PROJECTS.—Notwithstanding any other provision of this Act, the Committee shall, within 30 days of the date of the enactment of the Endangered Species Act Amendments of 1978, proceed to consider the exemption of the Tellico Dam and Reservoir Project and the Grayrocks Dam and Reservoir Project from the requirements of section 7(a). For the purposes of such consideration, the Committee shall grant an exemption to such projects if the criteria of section 7(h)(1)(A)(i) and 7(h)(1)(A)(ii) are met. A decision on any such exemption shall be made within 90 days after the date of the enactment of the Endangered Species Act Amendments of 1978. If no decision is made within such 90-day period, such project shall be deemed to be exempted from the requirements of section 7(a). *Ante*, p. 3752.

Project modifications.

"(2) Following the rendering of a biological opinion by the United States Fish and Wildlife Service concerning the effect, if any, of the operation of the Missouri Basin Power Project on endangered species or their critical habitat, the responsible officers of the Rural Electrification Administration, the Secretary of the Interior, and the Secretary of the Army, shall require such modifications in the operation or design of the project as they may determine are required to insure that actions authorized, funded, or carried out by them, relating to the Missouri Basin Power Project do not jeopardize the continued existence of such endangered species or result in the destruction or adverse modification of habitat of such species which is or has been determined to be critical by the Secretary of the Interior, after consultation as appropriate with the affected States.".

Civil penalties.

SEC. 6. Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended—

(1) in the first and second sentences of subsection (a)(1) by striking out "or who knowingly commits an act in the course of a commercial activity which violates" each place it appears and inserting in lieu thereof "and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates";

(2) in the third sentence of subsection (a)(1) by striking out "$1,000" and inserting in lieu thereof "$500";

(3) in subsection (b)(1) by striking out "willfully commits an act which" each place it appears and inserting in lieu thereof "knowingly";

(4) in subsection (b)(2) by inserting "a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing" after "authorizing".

SEC. 7. Section 11(a) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding a new paragraph at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.".

SEC. 8. Section 11(b) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding a new paragraph at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.".

SEC. 9. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

15 USC 1535. *Ante*, p. 3752.

"SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1977, and the fiscal year September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, and not to exceed $12,500,000 for the period beginning October 1, 1979, and ending March 31, 1980.

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 10. Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) is amended—

(1) by inserting "(1)" after "(c) COOPERATIVE AGREEMENTS.—";

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by striking out "subsection" in the matter preceding subparagraph (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph" in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (i) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

Cooperative agreement.
16 USC 1535.

Determination.

State program, annual reconfirmations.

"(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

Investigations.

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

Public participation.

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with

16 USC 1533, 1538.

respect to the taking of any resident endangered or threatened species.".

Regulation.

SEC. 11. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by adding at the end of subsection (a)(1) the following new sentence: "At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat. The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to enactment of the Endangered Species Act Amendments of 1978.";

Ante, p. 3751.

(2) by amending subsection (c)(1) by striking out "and shall", and by inserting immediately before the *final* period the following: ", and specify any critical habitat within such range";

(3) in subsection (c) by inserting at the end thereof the following new paragraph:

Review and determination.

"(4) The Secretary shall—

"(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

"(B) determine on the basis of such review whether any such species should—

"(i) be removed from such list;

"(ii) be changed in status from an endangered species to a threatened species; or

"(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b).".

(4) by amending subsection (f)—

(A) in paragraph (2)(A) by striking out "In" and inserting in lieu thereof "Except as provided in subparagraph (B), in";

(B) by inserting after subparagraph (A) of paragraph (2) the following new subparagraph:

Regulations.

"(B) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

Publication in Federal Register.

"(i) shall publish general notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation—

"(I) in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat;

"(ii) shall offer for publication in appropriate scientific journals the substance of the Federal Register notice referred to in clause (i)(I);

Notice.

"(iii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat, if any; and

"(iv) shall—

Public meetings and hearing.

"(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation within or adjacent to the area in which the endangered or threatened species is located, if request therefor is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

"(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each such State.

If a public meeting or hearing is held on any regulation, the regulation may not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. Any accidental failure to provide actual notice under clause (ii) to all general local governments required to be given notice shall not invalidate the proposed regulation.";

(C) by redesignating subparagraph (B) of paragraph (2) as subparagraph (C), and by inserting "or (B)" after "Neither subparagraph (A)" in such subparagraph; and

(D) by adding at the end thereof the following new paragraphs:

16 USC 1533.

Publication in Federal Register.

"(4) Any proposed or final regulation which specifies any critical habitat of any endangered species or threatened species shall be based on the best scientific data available, and the publication in the Federal Register of any such regulation shall, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be impacted by such designation.

Regulations or withdrawal notice, publication in Federal Register.

"(5) A final regulation adding a species to any list published pursuant to subsection (c) shall be published in the Federal Register not later than two years after the date of publication of notice of the regulation proposing such listing under paragraph (B)(i)(I). If a final regulation is not adopted within such two-year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the Federal Register not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before the date of the enactment of the Endangered Species

Act Amendments of 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on such date of enactment."; and

16 USC 1533.

(5) by adding at the end thereof the following new subsection:

"(g) RECOVERY PLANS.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.";

5 USC app.

(6) in subsection (c)(2)—

(A) by striking out "upon" and inserting in lieu thereof "within 90 days of the receipt of";

Publication in Federal Register.

(B) by inserting "and publish in the Federal Register" after "conduct";

(C) by inserting "the status of" after "a review of"; and

(D) by inserting at the end thereof the following: "Such review and finding shall be made and published prior to the initiation of any procedures under subsection (b)(1).".

Critical habitat determination, considerations.

(7) by adding at the end of subsection (b) the following new paragraph:

"(4) In determining the critical habitat of any endangered or threatened species, the Secretary shall consider the economic impact, and any other relevant impacts, of specifying any particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.".

Establishment and implementation.

SEC. 12. That portion of subsection (a) of section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534) which precedes paragraph (1) is amended to read as follows:

"(a) PROGRAM.—The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant

16 USC 1533.

to section 4 of this Act. To carry out such a program, the appropriate Secretary—".

Summary, publication in Federal Register.

SEC. 13. Paragraph (3) of section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended to read as follows:

"(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations.".

Dr. Eugene L. Vickery, exception.

SEC. 14. Notwithstanding any provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any regulation promulgated or policy established thereunder, the Secretary of the Interior is authorized and directed to release to Doctor Eugene L. Vickery of Lena, Illinois, a narwhale (Monodon monocerus) tusk cane contained in a shipment consigned to him that was seized by agents of the United States Fish and Wildlife Service at O'Hare International Airport, Chicago, Illinois, on November 30, 1977. For purposes of section 9 and section 11 of such Act, Doctor Vickery shall be considered not to have violated any provision of such Act with respect to the importation of such narwhale tusk cane.

Ante, pp. 3760, 3761.

Approved November 10, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1625 accompanying H.R. 14104 (Comm. on Merchant Marine and Fisheries) and No. 95-1804 (Comm. of Conference).
SENATE REPORT No. 95-874 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD, Vol. 124 (1978):
July 17-19, considered and passed Senate.
Oct. 14, H.R. 14104 considered and passed House; passage vacated, and S. 2899, amended, passed in lieu.
Oct. 15, Senate and House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 45:
Nov. 10, Presidential statement.

95TH CONGRESS
2D SESSION

H. R. 14104

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1978

Mr. LEGGETT (for himself, Mr. MURPHY of New York, Mr. DINGELL, Mr. RUPPE, Mr. FORSYTHE, Mr. BOWEN, Mr. OBERSTAR, Mr. DE LA GARZA, Mr. YOUNG of Alaska, Mr. AUCOIN, Mr. EMERY, Mr. HUGHES, Mr. AKAKA, Mr. DORNAN, Mr. EVANS of Delaware, Mr. TRIBLE, and Mr. ROONEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

SEC. 2. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by adding at the end of subsection (a)(1) the following new sentence: "At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat. The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to enactment of the Endangered Species Act Amendments of 1978.";

(2) by adding at the end of subsection (b) the following new paragraph:

"(4) In determining the critical habitat of any endangered or threatened invertebrate animal species, the Secretary shall consider the economic impact, and any other relevant impacts, of specifying any particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat."

(3) by amending subsection (c)(1) by striking out "and shall", and by inserting immediately before the period the following: ", and specify any critical habitat within such range";

(4) by amending subsection (f)—

(A) by amending paragraph (2)(A) to read as follows:

"(2)(A) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

"(i) shall publish notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation—

"(I) in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat; and

"(ii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat;

"(iii) shall—

"(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation, if request therefor is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

"(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each such State.

If a public meeting or hearing is held on any regulation, the regulation may not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. Any accidental failure to provide actual notice under clause (ii) to all general local governments required to be given notice shall not invalidate the proposed regulation."; and

(B) by adding at the end thereof the following new paragraph:

"(4) Any proposed or final regulation which specifies any critical habitat of any endangered species or threatened species shall be based on the best scientific data available, and the publication in the Federal Register of any such regulation shall, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be impacted by such designation."; and

(5) by adding at the end thereof the following new subsection:

"(g) Recovery Plans.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the conservation or survival of endangered species and threatened species listed pursuant to this section. The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.".

Sec. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"Sec. 7. (a) Review by Secretary.—The Secretary shall review all other programs administered by him and utilize such programs in furtherance of the purposes of this Act.

"(b) AGENCY CONSERVATION PROGRAMS.—Each Federal agency shall, after consultation with and with the assistance of the Secretary, utilize its authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4.

"(c) AGENCY ACTION.—(1) Each Federal agency shall insure that any action authorized, funded, or carried out by the agency (hereinafter in this section referred to as an 'agency action') does not result in species or habitat degradation unless an exemption has been granted by the Endangered Species Committee under subsection (f) with respect to such agency action.

"(2) If any Federal agency—

"(A) considers that any agency action over which it has jurisdiction may result in species or habitat degradation; or

"(B) is notified by the Secretary that the Secretary considers that such agency action may have such a result;

the Federal agency and the Secretary shall undertake immediate consultation with respect to the matter, including, but not limited to, consultation to determine if reasonable and prudent alternatives are available. Consultation under this paragraph with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing whether the agency action may result in species or habitat degradation and whether there are reasonable and prudent alternatives which would avoid species or habitat degradation which can be taken by the Federal agency in implementing the agency action.

"(3) To facilitate compliance with the requirements of paragraph (2)(A), each Federal agency shall, with respect to any action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any listed species may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

"(4) After initiation of consultation required under paragraph (2), the Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid species or habitat degradation.

"(d) APPLICATION FOR EXEMPTION AND CONSIDERATION BY REVIEW BOARD.—(1) A Federal agency, the Governor of the State in which the Federal agency action will occur, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if after consultation under subsection (c)(2) the Secretary's opinion indicates that the agency action may result in species or habitat degradation. An application for an exemption shall be considered initially by a review board in the manner provided in this subsection, and shall be considered by the Endangered Species Committee for a final determination under subsection (f) after a recommendation is made by the review board.

"(2)(A) Any Federal agency, Governor, or permit or license applicant seeking an exemption under this subsection shall submit a written application to the Secretary, in a form prescribed by the Secretary, not later than 90 days after the completion of the consultation process. Such application shall set forth the reasons why the Federal agency, Governor, or permit or license applicant considers that the agency action meets the requirements for an exemption under this subsection.

"(B) Upon receipt of the application for exemption referred to in paragraph (1), the Secretary shall promptly notify the Governor or Governors of the affected States and request that they appoint a member of the review board to be established under paragraph (3) in accordance with the provisions of such paragraph.

"(3)(A) A review board consisting of three members shall be established for purposes of considering an application for exemption and making recommendations to the Endangered Species Committee under this subsection as follows:

"(i) The Secretary and the Governor of the affected State shall each appoint one individual to the board not later than 15 days after a request is submitted pursuant to paragraph (2). If more than one State is affected by the agency action, the Governors of such States shall appoint one individual collectively.

"(ii) The two individuals appointed under clause (i) shall appoint one individual not later than 15 days after both of them have been appointed.

"(B) Members of a review board who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the board. All other members shall be entitled to receive an amount not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day during which they are engaged in the actual performance of duties vested in the board. While away from their homes or regular places of business in the performance of services for a review board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(4) The Secretary shall submit the application to the review board immediately after its appointment under paragraph (3), and the Secretary shall submit to the review board, in writing, his views and recommendations with respect to the application within 60 days after receiving a copy of any application under paragraph (2).

"(5) It shall be the duty of a review board appointed under paragraph (3) to make a full review of the consultation carried out under subsection (c)(2), and within 60 days after its appointment or within such longer time as is mutually agreed upon between the agency and the Secretary, to make a determination, by a majority vote, whether such agency has—

"(A) carried out its consultation responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to its proposed action which will avoid species or habitat degradation;

"(B) conducted any biological assessment required of it by subsection (c)(3); and

"(C) refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (c)(4).

Any determination by the review board that the agency has not met the requirements of subparagraph (A), (B), or (C) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(6) If the review board makes positive determinations under subparagraphs (A), (B), and (C) of paragraph (5), it shall proceed to consider the application for exemption. In considering any application for an exemption, a review board shall take into account the reasons for an exemption set forth in the application of the Federal agency, Governor, or permit or license applicant, the views of the Secretary submitted under paragraph (4), and the views of other Federal and State agencies and appropriate persons. The review board shall recommend an exemption from the requirements of subsection (c)(1) for any agency action if, by a majority vote, it determines on the record after an opportunity for a hearing held in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5 of the United States Code, that—

"(A) there are no feasible and prudent alternatives to the agency action;

"(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(C) the action is of national or regional significance.

The review board shall recommend to the Endangered Species Committee whether or not to grant an exemption within 180 days after the hearing described in this paragraph is initiated, or within such other time as is mutually agreed upon by the applicant and a majority of the review board. If the review board recommends an exemption it shall include with its recommendation any reasonable mitigation and enhancement measures which should be considered by the Endangered Species Committee under subsection (f). The review board shall transmit the record of its proceedings and its recommendation to the Committee.

"(7) In carrying out its duties under this subsection, a review board may, and any member of a review board if so authorized by the review board, may—

"(A) sit and act at such times and places, take such testimony, and receive such evidence, as the review board deems advisable;

"(B) subject to the Privacy Act of 1974, request of any Federal agency information necessary to enable it to carry out such duties, and upon such request the head of such Federal agency shall furnish such information to the review board; and

"(C) use the United States mails in the same manner and upon the same conditions as other Federal agencies.

"(8) Upon request of a review board, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the review board to assist it in carrying out its duties under this section.

"(9) The Administrator of the General Services shall provide to a review board, on a reimbursable basis, such administrative support services as the review board may request.

"(10) All meetings and records of review boards shall be open to the public.

"(e) ESTABLISHMENT OF COMMITTEE.—(1) There is established a Committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall be composed of six members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Secretary of the Interior.

"(D) The Administrator of the National Oceanic and Atmospheric Administration.

"(E) The Chairman of the Council on Environmental Quality.

"(F) The Governor of the State in which the Federal agency action for which an exemption is sought under this section will occur (or in the case of any agency action which will occur in more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee).

"(3) The Chairman of the Council on Environmental Quality shall be the Chairman of the Committee.

"(4) Members of the Committee shall receive no additional pay on account of their service on the Committee;

except that while away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5) The Committee shall meet at the call of the Chairman or four of its members.

"(6) All meetings and records of the Committee shall be open to the public.

"(7) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony and receive such evidence as the Committee deems desirable.

"(f) EXEMPTION.—The Committee shall make a final determination whether or not to grant an exemption within 90 days of receiving the recommendation of the review board under subsection (d)(6). The Committee shall grant an exemption from the requirements of subsection (c)(1) for an agency action if, by a vote of not less than four of its members voting in person—

"(1) it determines on the record, based on the recommendation and the record of the review board and on such other testimony or evidence as it may receive, that—

"(A) there are no feasible and prudent alternatives to the agency action;

"(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(C) the action is of regional or national significance; and

"(2) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(g) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

"(h) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (f) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (f) which shall be carried out and paid for by the Federal agency in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

"(2) The Federal agency receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any Federal agency may request the Secretary to carry out such mitigation measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the agency receiving the exemption. No later than one year after the granting of an exemption, the agency to which the exemption was granted shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the agency preparing such reports.

"(i) JUDICIAL REVIEW.—Any person, as defined by section 3(8) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (f) in the district court of the United States for any district wherein the agency action concerned will be, or is being, carried out by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in, any action for review under this subsection.

"(j) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsection (f) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

"(k) SPECIAL PROVISIONS.—(1) An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

"(2) Notwithstanding sections 4(d) and 9(a), or any regulation issued to carry out such sections, no act or activity engaged in which is necessary to carry out any agency action for which an exemption is granted under this section shall be considered to be a taking of any endangered species or threatened species.

"(l) AUTHORIZATION.—There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (d), (e), and (f) of this section not to exceed $500,000 for fiscal year 1979, not to exceed $500,000 for fiscal year 1980, and not to exceed $500,000 in fiscal year 1981.".

SEC. 4. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending

September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 5. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(1) by inserting after paragraph (4) thereof the following new paragraphs:

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

"(6) The term 'critical habitat' for an endangered species or threatened species means any air, land, or water area (exclusive of those existing manmade structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would significantly decrease the likelihood of conserving such species."; and

(2) by striking out paragraph (13), as redesignated by paragraph (5) of this section, and inserting in lieu thereof the following:

"(13) The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct segment of the population of any species of vertebrate fish or wildlife which interbreeds when mature.";

(3) by striking out paragraph (15), as redesignated by paragraph (5) of this section, and inserting in lieu thereof the following:

"(15) The term 'State agency' means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.";

(4) by inserting at the end thereof the following new paragraphs:

"(19) The term 'species or habitat degradation' means either or both of the following effects:

"(A) The placing in jeopardy of the continued existence of any endangered species or threatened species listed pursuant to section 4.

"(B) The destruction or adverse modification of any critical habitat of any endangered species or threatened species so listed.

"(20) The term 'permit or license applicant' means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied because of the application of section 7(c)(1) to such agency action;

(5) by redesignating paragraphs (5) through (16) as paragraphs (7) through (18), respectively, and by redesignating any references thereto accordingly.

SEC. 6. Paragraph (3) of section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended to read as follows:

"(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations.".

SEC. 7. Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by striking out "subsection" in the matter preceding subparagraph (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph" in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (i) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

"(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.".

SEC. 8. Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended—

(1) in the first and second sentences of subsection (a)(1) by striking out "or who knowingly commits an act in the course of a commercial activity which violates" each place it appears and inserting in lieu thereof "and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates";

(2) in the third sentence of subsection (a)(1) by striking out "$1,000" and inserting in lieu thereof "$500";

(3) in subsection (b)(1) by striking out "willfully commits an act which" each place it appears and inserting in lieu thereof "knowingly";

(4) in subsection (b)(2) by inserting "a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing" after "authorizing";

(5) in subsection (a) by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.";

(6) in subsection (b) by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution if the defendant committed the offense based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species."; and

(7) in paragraph (4) of subsection (g) by striking out "any party" and inserting in lieu thereof "the prevailing party".

SEC. 9. That portion of subsection (a) of section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534) which precedes paragraph (1) is amended to read as follows:

"(a) The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—".

SEC. 10. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)" and by adding the following new paragraph:

"(2)(A) This section shall not apply to—

"(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

"(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

"(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

Union Calendar No. 873

95TH CONGRESS
2D SESSION

H. R. 14104

[Report No. 95–1625]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1978

Mr. LEGGETT (for himself, Mr. MURPHY of New York, Mr. DINGELL, Mr. RUPPE, Mr. FORSYTHE, Mr. BOWEN, Mr. OBERSTAR, Mr. DE LA GARZA, Mr. YOUNG of Alaska, Mr. AUCOIN, Mr. EMERY, Mr. HUGHES, Mr. AKAKA, Mr. DORNAN, Mr. EVANS of Delaware, Mr. TRIBLE, and Mr. ROONEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

SEPTEMBER 25, 1978

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

SEC. 2. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by adding at the end of subsection (a)(1) the following new sentence: "At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat. The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to enactment of the Endangered Species Act Amendments of 1978.";

(2) by adding at the end of subsection (b) the following new paragraph:

"(4) In determining the critical habitat of any endangered or threatened invertebrate animal species, the Secretary shall consider the economic impact, and any other relevant impacts, of specifying any particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat."

(3) by amending subsection (c)(1) by striking out "and shall", and by inserting immediately before the *final* period the following: ", and specify any critical habitat within such range";

(4) in subsection (c) by inserting at the end thereof the following new paragraph:

"(4) The Secretary shall—

"(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

"(B) determine on the basis of such review whether any such species should—

"(i) be removed from such list;

"(ii) be changed in status from an endangered species to a threatened species; or

"(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b).".

~~(4)~~ *(5)* by amending subsection (f)—

(A) by amending paragraph (2)(A) to read as follows:

"(2)(A) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

"(i) shall publish notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation—

"(I) in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat; and

"(ii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat;

"(iii) shall—

"(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation, if request therefor is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

"(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each such State.

If a public meeting or hearing is held on any regulation, the regulation may not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. Any accidental failure to provide actual notice under clause (ii) to all general local governments required to be given notice shall not invalidate the proposed regulation."; and

(B) by adding at the end thereof the following new ~~paragraph:~~ *paragraphs:*

"(4) Any proposed or final regulation which specifies any critical habitat of any endangered species or threatened species shall be based on the best scientific data available, and the publication in the Federal Register of any such regulation shall, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be impacted by such designation.~~"; and~~

"(5) A final regulation adding a species to any list published pursuant to subsection (c) shall be published in the Federal Register not later than two years after the date of publication of notice of the regulation proposing such listing under paragraph (2)(A)(i). If a final regulation is not adopted within such two-year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the Federal Register not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before the date of the enactment of the Endangered Species Act Amendments of 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on such date of enactment.".

~~(5)~~*(6)* by adding at the end thereof the following new subsection:

"(g) RECOVERY PLANS.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the conservation or survival of endangered species and threatened species listed pursuant to this section. The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.".

SEC. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) REVIEW BY SECRETARY.—The Secretary shall review all other programs administered by him and utilize such programs in furtherance of the purposes of this Act.

"(b) AGENCY CONSERVATION PROGRAMS.—Each Federal agency shall, after consultation with and with the assistance of the Secretary, utilize its authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4.

"(c) AGENCY ACTION.—(1) Each Federal agency shall insure that any action authorized, funded, or carried out by the agency (hereinafter in this section referred to as an 'agency action') does not result in species or habitat degradation unless an exemption has been granted by the Endangered Species Committee under subsection (f) with respect to such agency action.

"(2) If any Federal agency—

"(A) considers that any agency action over which it has jurisdiction may result in species or habitat degradation; or

"(B) is notified by the Secretary that the Secretary considers that such agency action may have such a result;

the Federal agency and the Secretary shall undertake immediate consultation with respect to the matter, including, but not limited to, consultation to determine if reasonable and prudent alternatives are available. Consultation under this paragraph with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing whether the agency action may result in species or habitat degradation and whether there are reasonable and prudent alternatives which would avoid species or habitat degradation which can be taken by the Federal agency in implementing the agency action.

"(3) To facilitate compliance with the requirements of paragraph ~~(2)(A),~~ *(1),* each Federal agency shall, with respect to any action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any listed species may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

"(4) After initiation of consultation required under paragraph (2), the Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid species or habitat degradation.

"(d) APPLICATION FOR EXEMPTION AND CONSIDERATION BY REVIEW BOARD.—(1) A Federal agency, the Governor of the State in which the Federal agency action will occur, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if after consultation under subsection (c)(2) the Secretary's opinion indicates that the agency action may result in species or habitat degradation. An application for an exemption shall be considered initially by a review board in the manner provided in this subsection, and shall be considered by the Endangered Species Committee for a final determination under subsection (f) after a recommendation is made by the review board.

"(2)(A) Any Federal agency, Governor, or permit or license applicant seeking an exemption under this subsection shall submit a written application to the Secretary, in a form prescribed by the Secretary, not later than 90 days after the completion of the consultation process. Such application shall set forth the reasons why the Federal agency, Governor, or permit or license applicant considers that the agency action meets the requirements for an exemption under this subsection.

"(B) Upon receipt of the application for exemption referred to in paragraph (1), the Secretary shall promptly notify the Governor or Governors of the affected States, *as determined by the Secretary,* and request that they appoint a member of the review board to be established under paragraph (3) in accordance with the provisions of such paragraph.

"(3)(A) A review board consisting of three members shall be established for purposes of considering an application for exemption and making recommendations to the Endangered Species Committee under this subsection as follows:

"(i) The Secretary and the Governor of the affected State shall each appoint one individual to the board not later than 15 days after a request is submitted pursuant to paragraph (2). If more than one State is affected by the agency action, the Governors of such States shall appoint one individual collectively.

"(ii) The two individuals appointed under clause (i) shall appoint one individual not later than 15 days after both of them have been appointed. *If no appointment is made within such 15-day period, the Endangered Species Committee shall appoint, by a vote of a majority of the members of the Committee, one individual not later than 30 days after the end of such 15-day period.*

"(B) Members of a review board who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the board. All other members shall be entitled to receive an amount not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day during which they are engaged in the actual performance of duties vested in the board. While away from their homes or regular places of business in the performance of services for a review board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(4) The Secretary shall submit the application to the review board immediately after its appointment under paragraph (3), and the Secretary shall submit to the review board, in writing, his views and recommendations with respect to the application within 60 days after receiving a copy of any application under paragraph (2).

"(5) It shall be the duty of a review board appointed under paragraph (3) to make a full review of the consultation carried out under subsection (c)(2), and within 60 days after its appointment or within such longer time as is mutually agreed upon between the agency and the Secretary, to make a determination, by a majority vote, whether such agency has—

"(A) carried out its consultation responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to its proposed action which will avoid species or habitat degradation;

"(B) conducted any biological assessment required of it by subsection (c)(3); and

"(C) refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (c)(4).

Any determination by the review board that the agency has not met the requirements of subparagraph (A), (B), or (C) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(6) If the review board makes positive determinations under subparagraphs (A), (B), and (C) of paragraph (5), it shall proceed to consider the application for exemption. In considering any application for an exemption, a review board shall take into account the reasons for an exemption set forth in the application of the Federal agency, Governor, or permit or license applicant, the views of the Secretary submitted under paragraph (4), and the views of other Federal and State agencies and appropriate persons. The review board shall recommend an exemption from the requirements of subsection (c)(1) for any agency action if, by a majority vote, it determines on the record after an opportunity for a hearing held in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5 of the United States Code, that—

"(A) there are no feasible and prudent alternatives to the agency action;

"(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(C) the action is of national or regional significance.

The review board shall recommend to the Endangered Species Committee whether or not to grant an exemption within 180 days after the hearing described in this paragraph is initiated, or within such other time as is mutually agreed upon by the applicant and a majority of the review board. If the review board recommends an exemption it shall include with its recommendation any reasonable mitigation and enhancement measures which should be considered by the Endangered Species Committee under subsection (f). The review board shall transmit the record of its proceedings and its recommendation to the Committee.

"(7) In carrying out its duties under this subsection, a review board may, and any member of a review board if so authorized by the review board, may—

"(A) sit and act at such times and places, take such testimony, and receive such evidence, as the review board deems advisable;

"(B) subject to the Privacy Act of 1974, request of any Federal agency information necessary to enable it to carry out such duties, and upon such request the head of such Federal agency shall furnish such information to the review board; and

"(C) use the United States mails in the same manner and upon the same conditions as ~~other Federal agencies.~~ *a Federal agency.*

"(8) Upon request of a review board, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the review board to assist it in carrying out its duties under this section.

"(9) The Administrator of the General Services shall provide to a review board, on a reimbursable basis, such administrative support services as the review board may request.

"(10) All meetings and records of review boards shall be open to the public.

"(e) ESTABLISHMENT OF COMMITTEE.—(1) There is established a Committee to be known as the Endangered

Species Committee (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall be composed of six members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Secretary of the Interior.

"(D) The Administrator of the National Oceanic and Atmospheric Administration.

"(E) The Chairman of the Council on Environmental Quality.

"(F) The Governor of the State in which the Federal agency action for which an exemption is sought under this section will occur (or in the case of any agency action which will occur in more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee).

"(3) The Chairman of the Council on Environmental Quality shall be the Chairman of the Committee.

"(4) Members of the Committee shall receive no additional pay on account of their service on the Committee; except that while away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5) The Committee shall meet at the call of the Chairman or four of its members.

"(6) All meetings and records of the Committee shall be open to the public.

"(7) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony and receive such evidence as the Committee deems desirable.

"(f) EXEMPTION.—The Committee shall make a final determination whether or not to grant an exemption within 90 days of receiving the recommendation of the review board under subsection (d)(6). The Committee shall grant an exemption from the requirements of subsection (c)(1) for an agency action if, by a vote of not less than four of its members voting in person—

"(1) it determines on the record, based on the recommendation and the record of the review board and on such other testimony or evidence as it may receive, that—

"(A) there are no feasible and prudent alternatives to the agency action;

"(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(C) the action is of regional or national significance; and

"(2) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(g) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

"(h) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (f) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (f) which shall be carried out and paid for by the Federal agency in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

"(2) The Federal agency receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any Federal agency may request the Secretary to carry out such mitigation measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the agency *or the permit or license applicant* receiving the exemption. No later than one year after the granting of an exemption, the agency to which the exemption was granted shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the agency preparing such reports.

"(i) JUDICIAL REVIEW.—Any person, as defined by section 3(8) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (f) in the district court of the United States for any district wherein the agency action concerned will be, or is being, carried out by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in, any action for review under this subsection. *Any action for review under this subsection shall receive preference over other matters before the court and shall be heard and determined as expeditiously as the court considers practicable.*

"(j) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—In any area which has been declared by the President to be a major disaster area under the Disaster

Relief Act of 1974, the President is authorized to make the determinations required by subsection (f) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

"(k) SPECIAL PROVISIONS.—(1) An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

"(2) Notwithstanding sections 4(d) and 9(a), or any regulation issued to carry out such sections, no act or activity engaged in which is necessary to carry out any agency action for which an exemption is granted under this section shall be considered to be a taking of any endangered species or threatened species.

"(l) AUTHORIZATION.—There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (d), (e), and (f) of this section not to exceed $500,000 for fiscal year 1979, not to exceed $500,000 for fiscal year 1980, and not to exceed $500,000 in fiscal year 1981.".

SEC. 4. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending

September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 5. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(1) by inserting after paragraph (4) thereof the following new paragraphs:

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

"(6) The term 'critical habitat' for an endangered species or threatened species means any air, land, or water area (exclusive of those existing manmade structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would significantly decrease the likelihood of conserving such species."; and

(2) by striking out paragraph (13), as redesignated by paragraph (5) of this section, and inserting in lieu thereof the following:

"(13) The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct segment of the population of any species of vertebrate fish or wildlife which interbreeds when mature.";

(3) by striking out paragraph (15), as redesignated by paragraph (5) of this section, and inserting in lieu thereof the following:

"(15) The term 'State agency' means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.";

(4) by inserting at the end thereof the following new paragraphs:

"(19) The term 'species or habitat degradation' means either or both of the following effects:

"(A) The placing in jeopardy of the continued existence of any endangered species or threatened species listed pursuant to section 4.

"(B) The destruction or adverse modification of any critical habitat of any endangered species or threatened species so listed.

"(20) The term 'permit or license applicant' means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied because of the application of section 7(c)(1) to such agency ~~action;~~ *action."*

(5) by redesignating paragraphs (5) through (16) as paragraphs (7) through (18), respectively, and by redesignating any references thereto accordingly.

SEC. 6. Paragraph (3) of section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended to read as follows:

"(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations.".

SEC. 7. Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) is amended—

(1) by inserting "(1)" after ~~"(c)";~~ *"(c) COOPERATIVE AGREEMENTS.—";*

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by striking out "subsection" in the matter preceding subparagraph (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph" in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (i) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

"(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.".

SEC. 8. Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended—

(1) in the first and second sentences of subsection (a)(1) by striking out "or who knowingly commits an act in the course of a commercial activity which violates" each place it appears and inserting in lieu

thereof "and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates";

(2) in the third sentence of subsection (a)(1) by striking out "$1,000" and inserting in lieu thereof "$500";

(3) in subsection (b)(1) by striking out "willfully commits an act which" each place it appears and inserting in lieu thereof "knowingly";

(4) in subsection (b)(2) by inserting "a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing" after "authorizing";

(5) in subsection (a) by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.";

(6) in subsection (b) by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution if the defendant committed the offense based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species."; and

(7) in paragraph (4) of subsection (g) by striking out "any party" and inserting in lieu thereof "the prevailing party".

SEC. 9. That portion of subsection (a) of section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534) which precedes paragraph (1) is amended to read as follows:

"(a) *PROGRAM.*—The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—".

SEC. 10. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after ~~"(b)"~~ *"(b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—"* and by adding the following new paragraph:

"(2)(A) This section shall not apply to—

"(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

"(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

"(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

SEC. 11. Section 10 of the endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

"(h) CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d) and 9(a) do not apply to any article (other than scrimshaw) which—

"(A) was made before 1830;

"(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

"(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

"(D) is entered at a port designated under paragraph (3).

"(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

"(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.".

95th Congress } HOUSE OF REPRESENTATIVES { **Report**
2d Session } { No. 95-1625

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

September 25, 1978.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. Murphy of New York, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 14104]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 14104) to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 23, insert "final" after "the".

Page 2, after line 25, insert the following:

(4) in subsection (c) by inserting at the end thereof the following new paragraph:

> (4) The Secretary shall—
>
> (A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and
>
> (B) determine on the basis of such review whether any such species should—
>
> (i) be removed from such list;
>
> (ii) be changed in status from an endangered species to a threatened species; or
>
> (iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b).

Page 3, line 1, strike out "(4)" and insert in lieu thereof "(5)".

Page 4, line 22, strike out "paragraph" and insert in lieu thereof "paragraphs".

Page 5, line 6, strike out all that follows the period.

Page 5, after line 6, insert the following:

> (5) A final regulation adding a species to any list published pursuant to subsection (c) shall be published in the Federal Register not later than two years after the date of publication of notice of the regulation proposing such listing under paragraph (2)(A)(i). If a final regulation is not adopted within such two-year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the Federal Register not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before the date of the enactment of the Endangered Species Act Amendments of 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on such date of enactment.

Page 5, line 7, strike out "(5)" and insert in lieu thereof "6".

Page 7, line 14, strike out "(2)(A)," and insert in lieu thereof "(1),".

Page 9, line 12, insert ", as determined by the Secretary," after "States".

Page 10, line 3, insert after the period the following:

> If no appointment is made within such 15-day period, the Endangered Species Committee shall appoint, by a vote of a majority of the members of the Committee, one individual not later than 30 days after the end of such 15-day period.

Page 13, beginning on line 16, strike out "other Federal agencies." and insert in lieu thereof "a Federal agency.".

Page 18, line 3, insert "or the permit or license applicant" after "agency".

Page 18, line 23, insert after the period the following:

> Any action for review under this subsection shall receive preference over other matters before the court and shall be heard and determined as expeditiously as the court considers practicable.

Page 23, line 3, strike out "action;" and insert in lieu thereof "action." and closing quotation marks.

Page 23, line 18, strike out "(c)" and insert in lieu thereof "(c) Cooperative Agreements.—".

Page 28, line 9, insert "PROGRAM.—" after "(a)".

Page 28, line 16, strike out "(b)" and insert in lieu thereof "(b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—".

Page 29, after line 10, insert the following:

SEC. 11. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

(h) CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d) and 9(a) do not apply to any article (other than scrimshaw) which—

(A) was made before 1830;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to authorize appropriations to carry out the Endangered Species Act, and to introduce some flexibility into the Act.

To accomplish this purpose, the legislation adopts a procedure through which Federal agencies may be considered for an exemption from the Act's mandate that they not jeopardize the continued existence of any endangered or threatened species or adversely modify the critical habitat of such species.

LEGISLATIVE BACKGROUND

H.R. 13870, the predecessor bill to H.R. 14104, was introduced on August 9, 1978, by Mr. Leggett, following eight days of oversight hearings on the operation and administration of the Endangered Species Act by the Subcommittee on Fisheries and Wildlife Conservation and the Environment. H.R. 13807 was considered by the subcommittee in open markup sessions on August 21, 22, and 23, and September 11 and 13. On September 13, 1978, the subcommittee unanimously adopted an amendment in the nature of a substitute to H.R. 13807 and ordered the bill, as amended, reported to the Full Committee in the form of the clean bill, H.R. 14104.

H.R. 14104 was introduced on September 18, 1978 by Mr. Leggett and cosponsored by Mr. Murphy of New York, Mr. Dingell, Mr. Ruppe, Mr. Forsythe, Mr. Bowen, Mr. Oberstar, Mr. de la Garza, Mr. Young of Alaska, Mr. AuCoin, Mr. Emery, Mr. Hughes, Mr. Akaka, Mr. Dornan, Mr. Evans of Delaware, Mr. Trible and Mr. Rooney.

The Committee considered H.R. 14104 in open markup session on September 19 and unanimously ordered the bill reported to the House with amendments.

H.R. 14104, in addition to a number of other provisions, authorizes appropriations to the Departments of the Interior and Commerce to carry out the Endangered Species Act through Fiscal Year 1981. To that extent the bill is identical to H.R. 10883 reported to the House by the Committee on March 31, 1978 in order to comply with Section 402 of the Congressional Budget Act.

Briefly explained H.R. 14104, as ordered reported to the House, would do the following:

1. Revise the notice procedures in the Act to improve public notice of proposals to list species as endangered or threatened and designate critical habitat;
2. Require public hearings in areas affected by a designation of critical habitat;
3. Establish a procedure whereby Federal agencies can receive exemptions from the requirements of the Act through a six member cabinet level committee;
4. Establish a grant-in-aid program for States which have developed an adequate and active program for the conservation of endangered and threatened plants;
5. Revise the penalty provisions of the Act by reducing the strict liability penality for others than importers and exporters to $500, making criminal violations of the Act a general rather than a specific intent crime, and subjecting importers and exporters of fish and wildlife and plants to strict liability penalties of up to $10,000;
6. Provide the Secretary of Agriculture with authority to acquire land for the conservation of endangered and threatened species with Land and Water Conservation Funds;
7. Provide exceptions from the act's requirements for the progeny of legally held captive raptors and antique articles made before 1830;
8. Require a review of the endangered species list at least once every 5 years; and
9. Authorize appropriations of $25.5 million in fiscal year 1979; $28 million in fiscal year 1980; and $30.5 million in fiscal year 1981 to carry out the purposes of the act.

BACKGROUND AND NEED FOR THE LEGISLATION

1. OVERVIEW OF THE ENDANGERED SPECIES ACT OF 1973

Congressional concern about rapidly deteriorating fish, wildlife and plant habitat, indiscriminate utilization of plants and animals and increasing numbers of species threatened with extinction resulted in a series of legislative actions culminating in the enactment of the Endangered Species Act of 1973. The act repealed the Endangered Species Conservation Act of 1969, broadened Federal responsibilities to list species and increased the Federal authorization and programs for insuring the survival of species.

The primary purpose of the Endangered Species Act of 1973 is to prevent animal and plant species endangerment and extinction caused by man's influence on ecosystems, and to return the species to the point where they are viable components of their ecosystems. The Department of the Interior estimates that there are 20 species becoming extinct per decade in the United States and an even greater number entering the endangered category. If this rate applies worldwide an estimated 300 extinctions occur per decade.

The process of extinction, of course, is a natural phenomenon. Throughout the hsitory of the world species of animals and plants have appeared, changed and disappeared. In recent time the "extinction experience" has changed dramatically. All available evidence suggests that the rate of extinction of many species of plants and animals has increased significantly in the post-industrial era. In many cases the process of extinction has been associated with an increase in man's ability to alter natural habitats for his own devices. The loss of habitat for many species is universally cited as the major cause for the extinction of species worldwide.

A. Listing of endangered and threatened species

The protections provided to animal and plant species threatened with extinction are activated by the listing of a species as "endangered" or "threatened." The endangered category refers to those species which are threatened with extinction through all or a significant portion of its range, while threatened species are those that are likely to become endangered within the foreseeable future. The various prohibitions provided in the Act may vary depending on whether a species is listed as "endangered" or "threatened."

Species are added to the endangered and threatened species list in two different ways. A member of the public may petition the Secretary for a listing, or the listing process may be initiated by the Department of the Interior or Commerce on the basis of the best scientific and commercial data available. If a private citizen petitions the Secretary to list a species, and presents substantial evidence in support of the petition, the Secretary is required to conduct a review of the species. Although the Department of the Interior uses a priority system to determine which of the hundreds of unlisted endangered species should be acted on first, the petitioning process interrupts the Department's priority system by requiring immediate review.

The act provides five criteria for determining whether a species is endangered or threatened. These are:

1. The present or threatened destruction, modification, or curtailment of the species habitat or range;
2. Overutilization for commercial, sporting, scientific, or educational purposes;
3. Disease or predation;

4. The inadequacy of existing regulatory mechanism; or
5. Other natural or manmade factors affecting its continued existence.

Any proposed listing, delisting, or reclassification is published in the Federal Register, and the public is given at least 60 days in which to comment. Individuals may request a public hearing on a proposed listing, but the Secretary has the discretion to deny the hearing request. The Department has held six public hearings on listing proposals, and they have denied five requests for hearings. The Director of the Fish and Wildlife Service recently announced that all future proposed designations of critical habitat would be accompanied by a hearing in the local area.

Following the review of comments and evaluation of the best available biological data the Department may publish a notice of final rulemaking in the Federal Register. Regulatory proposals generally become effective 30 days after publication of the final determination in the Federal Register.

As of August 1978, the endangered and threatened species list contained 228 domestic and 457 foreign species. An additional 137 animal species and 1,850 plant species have been formally proposed for listing as endangered or threatened (See table 1).

TABLE 1

Category	Endangered and threatened species		
	United States	Foreign	Total
Mammals	34	245	279
Birds	71	144	215
Reptiles and amphibians	26	55	81
Fishes	41	10	51
Snails	7	1	8
Clams	23	2	25
Crustaceans	1	0	1
Insects	8	0	8
Plants	17	0	17
Total	228	457	685

Although most of the Department's actions under the Act have involved the listing of species, the act also authorizes the Secretary to delist or reclassify species in much the same manner as the initial listing. Certain species that closely resemble listed endangered or threatened species can also be listed under the act if the Secretary finds that the listing of the physically similar species will facilitate enforcement of the act. The ultimate goal of the Endangered Species Act is to focus sufficient attention on listed species so that, in time, they can be returned to a healthy state and removed from the list.

B. *Prohibited activities*

Once an animal or plant species has been listed as endangered, the act prohibits a number of activities involving the listed species unless an exception applies or a permit is granted. These prohibitions include:

1. The taking of endangered animal species;
2. The importing or exporting of listed species;

3. The selling or delivering any species which are illegally taken; or

4. The sale of listed species in interstate or foreign commerce.

These prohibitions apply to live or dead species; to their parts or products; to all progeny of animals born on or after December 28, 1973; and to animals held at that time for sale or barter.

All of these prohibitions apply automatically in the case of a species which is listed as endangered. In contrast, when a species is listed as threatened, the Secretary has the discretion to proscribe actions as he deems necessary to provide for the conservation of the species.

C. Exceptions

Although the act established a number of stringent protections for animals and plants listed as endangered, it also provided for some exceptions to the general prohibitions. These include:

1. An exemption for listed animals that were in captivity or a controlled environment on December 28, 1973, and not held in the course of a commercial activity; and
2. An exception which permits Alaskan Natives to take listed species for subsistence purposes, and which permits them to sell native handicrafts fashioned from the nonedible byproducts of listed species.

The act also authorizes the Secretary to permit acts otherwise prohibited by the statute for scientific purposes or to enhance the propagation or survival of the affected species.

D. Penalties and enforcement

The act established a three-tiered civil and criminal penalty provision for violations of the statute. Any person violating the act is subject to a maximum strict liability penalty of $1,000. If a person knowingly violates a provision of the act he can be fined up to $10,000 for each violation; and any person who willfully commits an act which violates the statute can be fined up to $20,000 or imprisoned up to one year.

In addition the civil and criminal penalty provisions provided already discussed, the act authorizes any person, private entity, as well as any State or Federal agency to bring suit to enjoin violations of the act.

II. SECTION 7 AND CRITICAL HABITAT

Section 7 of the Endangered Species Act requires Federal agencies to insure that any action authorized, funded or carried out by them does not jeopardize the continued existence of listed species or destroy or modify the critical habitat of any endangered or threatened species. This one small section has developed into one of the most significant portions of the entire statute.

The mandate of section 7 applies once a species is listed or once "critical habitat" is designated for any listed species. The term "critical habitat" was not defined in the 1973 act, but regulations promulgated pursuant to the act have defined it to include "[a]ir, land or water areas . . . the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. . . ."

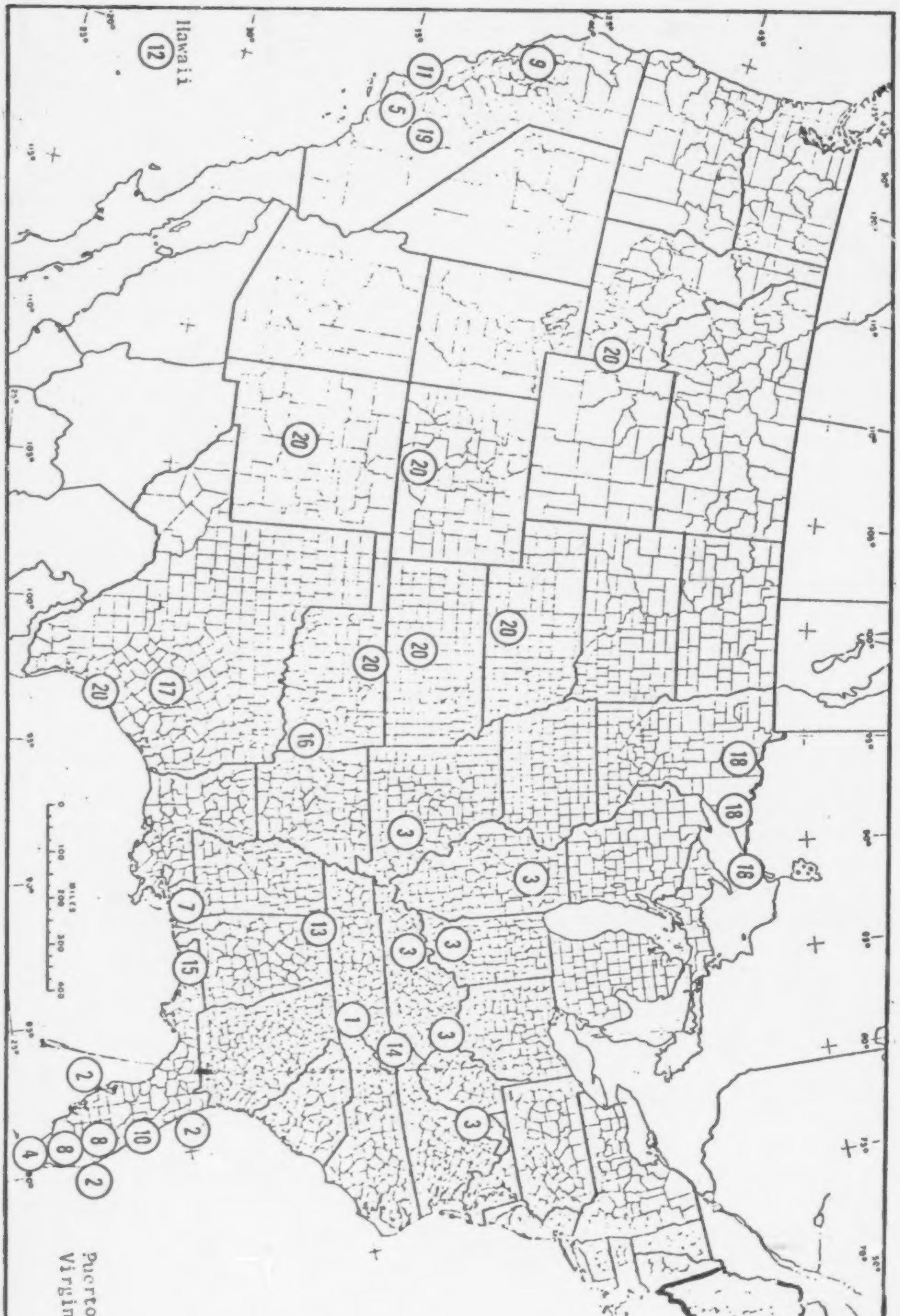
The designation of critical habitat for listed species occurs in much the same manner as the initial listing of the species as endangered or threatened. Although the Departments did not originally designate critical habitat concurrently with the listing they are not attempting to do so. As of August 1978, critical habitats had been designated for 32 separate species. The species involved and the area of the habitat are described in tables 2 and 3. An additional 56 critical habitats have been formally proposed for designation.

TABLE 2.—CRITICAL HABITAT FINALIZED, MAPS, AND DESCRIPTIONS

Species	Date of Federal Register	Estimated total acres (10^3)	Number of areas	Notes	Map index location
Snail darter (no map available)	Apr. 1, 1976	1.3	1		1.
Florida manatee (no map available)	Sept. 24, 1978	950	16	1	2, 4, 10.
Indian bat (no map available)	Sept. 24, 1976	NA	13	2	3, 1.
American crocodile	do	960	1		4.
California condor (no map available)	do	556	9		5, 19.
Yellow-shouldered blackbird	Nov. 19, 1976	22	1	3	6.
St. Croix lizard	June 3, 1977	.015	1		6.
Giant anole	July 21, 1977	1.6	1		6.
Mississippi sandhill crane	Aug. 8, 1977	25	3		7.
Everglade kite	Aug. 11, 1977	963	9		8.
American peregrine falcon	do	12	5		9.
Cape Sable seaside sparrow	do	271	4		4.
Dusky seaside sparrow	do	90	2		10.
Morro Bay kangaroo rat	do	.8	1		11.
Palila	do	77	1		12.
Alabama cavefish (no map available)	Sept. 9, 1977	NA	1	2	13.
Slackwater darter	do	20	2		13.
Slender chub	do	22	2		14.
Spotfin chub	do	186	3		1.
Yellowfin madtom	do	30	2		14.
Florida Pine Barrens treefrog	Nov. 11, 1977	1.1	6		15.
Golden coqui	do	7.5	3		6.
Leopard darter	Jan. 27, 1978	8.0	3	4	16.
Houston toad	Jan. 31, 1978	83	2		17.
Mona boa	Feb. 3, 1978	22	1	3	6.
Mona ground iguana	do	22	1	3	6.
Gray wolf	Mar. 9, 1978	4,600	4		18.
Little Kern golden trout	Apr. 13, 1978	36	1		19.
Whooping crane	May 15, 1978	365	9		20.
Contra costa wallflower	Aug. 31, 1978	.300	1		
Antioch Dunes evening primrose	do	0.03	1		
New Mexican ridgenose rattlesnake	do	1.000			
Total		9,392	110		

Notes:
1. Estimate subject to 30-percent error, either direction.
2. Caves, no estimate made of area.
3. (Mona Island, P.R.) all 3 species have same critical habitat.
4. Actual critical habitat is described as river or stream course, no actual area stated (estimated river miles converted to acres.).

TABLE 3


Hawaii
12
9
11
5
19
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17
16
18
18
18
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3
7
13
15
3
3
1
14
3
3
2
2
10
8
8
4
2
MILES
0
100
200
300
400
Puerto Rico/
Virgin Is.
6

As the Act is currently written, critical habitat is determined solely on the basis of biological factors. The Secretary has no discretion to alter a critical habitat designation on the basis of the effect that such designation may have on the area. In many cases, the designation of critical habitat may have little or no impact on activities within the area of the habitat. Whether a specific action may violate section 7 depends on a biological analysis of the impact of the activity on the listed species or its habitat.

A. Tellico Dam and the snail darter—judicial interpretations of section 7

As we have seen in the celebrated snail darter case, section 7 can potentially have an enormous impact on Federal activities. In June of this year, the U.S. Supreme Court affirmed the lower court decision in the Tellico Dam case holding that the Tennessee Valley Authority facility could not be completed as planned because it would jeopardize the existence and destroy the critical habitat of the snail darter, a member of the perch family (*Tennessee Valley Authority* v. *Hill et al.*, No. 76-1701). In reaching this conclusion the Court indicated that the legislative history of the act revealed that Congress intended to halt and reverse the trend toward species extinction—whatever the cost. The Court indicated that the pointed omission of any type of qualifying language in the statute revealed congressional intent to give the continued existence of endangered species priority over the primary missions of Federal agencies. The Supreme Court also dismissed the arguments that section 7 should not apply to any Federal action which is at an advanced stage of construction at the time the species is listed. The Court argued that the plain meaning of the language of section 7, read against the stated policies of the act and its legislative history, indicated that Congress did not intend agencies to be able to escape the mandate of section 7 simply on the basis of the stage of completion of the affected project or activity.

The Tennessee Valley Authority (TVA) has not conducted any further work on the Tellico Project since the Sixth Circuit Court of Appeals decision in January. Through February 1977 TVA had obligated about $103 million on the Tellico project. The General Accounting Office has estimated that about $56.3 million of the $103 million invested in the Tellico project could provide some benefit if the project is not completed. The amount of benefit to be derived from the investment depends largely on the ultimate case, however, and probably will not be proportionate with the original cost.

In all, Section 7 has been interpreted by the courts on three occasions. In *Sierra Club* v. *Froehlke*, 534 F. 2d 1289 (8th Cir. 1976), the plaintiffs challenged the construction of the Corps of Engineers' Meramec Park Lake Dam in Missouri. The plaintiffs alleged that the construction of the dam would jeopardize the continued existence of the endangered Indiana bat by flooding caves in which the bats were located. The 8th Circuit Court of Appeals affirmed the District Court's finding that the existence of any adverse impact on the bats was insufficiently conclusive to preclude construction under section 7.

In *National Wildlife Federation* v. *Coleman*, 529 F. 2d 359 (5th Cir. 1976), the Fifth Circuit Court of Appeals considered a conflict between the Mississippi sandhill crane, a subspecies of sandhill crane, and a planned interchange for Interstate Highway 10. The Court of

Appeals enjoined the Department of Transportation from proceeding with the planned construction of the interchange until the Department could ensure that the development of adjoining lands would not be detrimental to the continued survival of the cranes and the preservation of their habitat. Subsequent to this ruling, the parties to the action agreed that the Interchange could be built if the Department would purchase the land adjacent to the interchange. The completion of the interchange has been stalled, however, as a result of the dispute between the Departments of the Interior and Transportation as to who would be responsible for acquiring the land around the interchange.

Both the Indiana bat and the sandhill crane cases illustrate the fact that there is some degree of flexibility in Section 7. In the sandhill crane case the plaintiffs did not seek, and the court did not enjoin the completion of the highway despite the fact that it bisected the sandhill crane's habitat. In the Indiana bat case the court found that the impact of the impoundment on the bats and their habitat was not sufficiently severe to amount to a violation of Section 7. The determination of whether a particular activity violates Section 7 depends on the type and degree of impact that the activity will have on the species or its habitat. These cases also make it clear, however, that the determination of whether a particular activity violates section 7 is made irrespective of the economic importance of the activity.

B. Section 7 and the consultation process

In addition to requiring Federal agencies to ensure that their actions do not adversely impact endangered species, the section also requires all federal agencies to consult with the Department of the Interior (Department of Commerce in the case of marine species) when any of their actions may affect endangered species. This consultation process is central to the resolution of conflicts under the Act.

Typically the consultation process will be initiated by a Federal agency when it discovers that it may be taking an action that will have an impact on an endangered species. The agency contacts the Fish and Wildlife Service or the National Marine Fisheries Service, depending on the species involved, and requests assistance to determine whether there is a potential violation of section 7. The Service initially conducts a threshold examination in an attempt to determine that nature of any impact on a listed species. At the conclusion of the threshold examination the Service issues a biological opinion indicating whether the action is likely to jeopardize the species or adversely modify the critical habitat, and suggesting possible modification which would avoid any adverse impact.

Although section 7 has been in effect since 1973, this consultation procedure was not formally instituted until January of this year. The administration has testified that some 4500 consultations have been conducted under Section 7 since 1973. Unfortunately, until recently the Department of the Interior did not attempt to make a formal record of these consultations and the Committee has been unable to substantiate the number of successful consultations under the Act. It is assumed that a large number of the consultations amounted to informal contacts between the Federal agency and the Fish and Wildlife Service. The Department of the Interior estimates that there may be as many as 20,000 consultations during Fiscal Year

1979. In the future the Department should keep accurate records on each consultation on file regardless of whether consultation amounts to only a single inquiry such as a telephone call.

The evidence presented to the Committee suggests that in many instances good faith consultation between the acting agency and the Fish and Wildlife Service can resolve many endangered species conflicts. As an example, consultation between the Service and the Corps of Engineers on the proposed Dickey-Lincoln project in Maine appears to have resolved any potential conflict between the reservoir and the endangered furbish lousewort. In that case the Service recommanded a conservation program to the Corps of Engineers which included acquisition and protection of existing habitats below the project impoundment area, acquisition of new habitats for relocated populations. and the development of a monitoring program capable of detecting any changes in the lousewort's biological status. The consultation involving the furbish lousewort was one of the most complex conducted by the Fish and Wildlife Service. Some consultations may amount to no more than a simple inquiry whether a listed species is present in a project area.

Any determination by the Fish and Wildlife Service that the activity may jeopardize the continued existence of listed species does not necessarily mandate any particular action by the acting agency. The section 7 regulations make it clear that it is the responsibility of the acting agency to determine whether to proceed with the activity or program as planned in light of its Section 7 obligations. The judicial decisions interpreting Section 7 indicate, however, that the biological opinion issued by the Fish and Wildlife Service will ordinarily be given great weight by the courts. Federal agencies proceeding with an action in the face of an adverse biological opinion will be doing so at their peril.

Although consultation can be a valuable tool for resolving conflicts between endangered species and Federally authorized activities, the committee is concerned that the volume of consultations expected under section 7 may ultimately overwhelm the Fish and Wildlife Service. The committee is especially alarmed that, because additional full-time personnel ceilings have not been provided by the Administration, many of these all-important consultations will be performed by part-time personnel. The efficient operation of the Department's consultation teams is vital if future conflicts between endangered species and Federal development projects are to be avoided. The committee does not believe that part-time personnel can adequately perform the difficult task of consulting with other Federal agencies on projects which may result in species or habitat degradation.

III. THE POTENTIAL FOR FUTURE ENDANGERED SPECIES CONFLICTS

Before determining the need for any amendment to the Endangered Species Act, the Subcommittee on Fisheries and Wildlife Conservation and the Environment conducted the most extensive set of oversight hearings ever held on the operation of the Endangered Species Act. These hearings attempted to determine the nature and extent of current conflicts under the act, and the likelihood of future conflicts between listed species and federally authorized activities.

The evidence developed at these hearings suggests that the consultation process can resolve many if not most of the conflicts that might develop under the Act. The committee believes that the popular press has grossly exaggerated the potential for conflict under the Act. It is clear, nevertheless, that there will continue to be some Federally authorized activities which cannot be modified in a manner which will avoid a conflict with a listed species. For example, the Tennessee Valley Authority Columbia Dam project appears to pose a serious threat to several listed species. The likelihood of future conflicts will increase as more species are added to the Endangered Species List and as more critical habitats are designated for listed species. As we have already mentioned, there are currently 137 animals and 1850 plants proposed for listing as endangered and threatened and 56 critical habitats proposed for designation. The Department of the Interior anticipates listing some 414 domestic species and designating 293 critical habitats before 1980.

Numbers alone, nevertheless, can never tell the entire endangered species story. Many of the plant species, for example, are located in isolated areas of California and Hawaii. It is very unlikely that the listing of these plant species will precipitate conflicts with Federal activities. If a conflict develops, it will be a simple matter to relocate populations of these species to avoid a violation of section 7. On the other hand, the amount of biological information about any particular endangered species can be very limited. And as a result, it may be quite difficult for the Fish and Wildlife Service to know with any certainty at the consultation stage whether an activity will "jeopardize the existence" of a particular species.

All of these facts, considered together, convinced the committee that some flexibility is needed in the act to allow consideration of those cases where a Federal action cannot be completed or its objectives cannot be met without directly conflicting with the requirements of Section 7. The committee believes that an amendment of the Act is further justified in light of allegations by the General Accounting Office that the Fish and Wildlife Service has deliberately refrained from listing two species of insects which appear to pose a serious conflict with the New Melones Dam in California. The Fish and Wildlife Service has allegedly omitted these species from the list for fear of provoking the Congress into major revisions of the Endangered Species Act.

The committee considers these allegations to be extremely serious. Those individuals charged with the administration of the act do not have the legal authority to weigh the political importance of an endangered species. The fact that the very administrators of the act have apparently determined that the act is insufficiently flexible is evidence itself of the necessity for amendment.

IV. H.R. 14140—GENERAL DISCUSSION

A. *Compromise*

The Endangered Species Act amendments were subjected to a vigorous debate in both the Subcommittee and full committee. At one point, no less than five separate amendment proposals were considered by the committee in its markup session. H.R. 14104 represents a compromise between these disparate points of view. The bill attempts to retain the basic integrity of the Endangered Species Act, while introducing some flexibility which will permit exemptions from the Act's stringent requirements. At the same time, the legislation aims to improve the listing process and the public notice process of proposed listing and designations. These improvements will insure that all listing and designations are made by the Department of the Interior only after a thorough survey of all of the available data, and only after notice to the local communities that will be most affected by any listing or designation. In addition, the compromise amendment contains provisions allowing for the enhancement of existing critical habitat of endangered and threatened species.

B. Exemption procedure

H.R. 14104 would establish a procedure through which Federal activities could be exempted from the requirements of section 7 of the act. The exemption procedure could be initiated once the Secretary issues a biological opinion indicating that the agency action may jeopardize the continued existence of a listed species or adversely modify its critical habitat. The application would initially be considered by a three member review board which would make recommendations to a six member cabinet level committee. The procedure outlined here is very similar to that regularly utilized by Federal agencies under the terms of the Administrative Procedure Act. In this case, the review board would be acting in much the same capacity as an administrative hearing examiner who makes recommendations to a Federal agency on a pending regulatory proposal.

The review board would be composed of an appointee of the Secretary of the Interior (the Secretary of Commerce in the case of marine species), an appointee of the Governor of the affected State, and an individual appointed by the two appointees.

Before proceeding to review the merits of granting an exemption for the agency action, the review board would be required to make an initial determination that the agency has made a good faith effort to consult with the Fish and Wildlife Service and attempt to resolve the conflict with the endangered species. This step is crucial in order to insure that all Federal agencies fully comply with the consultation requirements of section 7.

Once the review board determined that the agency had consulted in good faith, it could proceed to consider the merits of the application. The review board would determine, on the basis of the evidence presented at a formal adjudicatory hearing, whether—

A. There are no feasible and prudent alternatives to the agency action;

B. The benefits of the agency action clearly outweigh the benefits of alternative courses of action consistent with the conservation of the species; and

C. The action is of national or regional significance.

At the conclusion of the formal hearing the review board would forward its recommendation, including a recommendation of the necessary mitigation and enhancement measures to be taken, to the Endangered Species Committee composed of the following members:

1. The Secretary of Agriculture;
2. The Secretary of the Army;

3. The Secretary of the Interior;
4. The Administrator of the National Oceanic and Atmospheric Administration;
5. The Chairman of the Council on Environmental Quality; and
6. The Governor of the State in which the agency action will occur.

The Endangered Species Committee would review the recommendations of the review board and the evidence on which it is based and would decide whether or not to grant an exemption from section 7 of the act. Four out of the six committee members would have to vote for an exemption in order for an exemption to be granted. If such an exemption is granted, the committee would be required to establish the necessary mitigation and enhancement measures.

The Committee on Merchant Marine and Fisheries adopted the exemption procedure with the firm belief that it offers the best potential for fairly evaluating and balancing the benefits of the agency action against the benefits of alternatives which will insure the conservation of the species. The membership of the Endangered Species Committee has been deliberately structured to take advantage of a broad array of experience and expertise and to balance all possible points of view.

The committee would like to point out, in response to the additional views of several members of the Committee, that the review board does not duplicate the duties of the Endangered Species Committee. The review board merely makes recommendations to the Endangered Species Committee. In this sense, the review board will be acting as a hearing examiner for the committee. Even if the bill did not include a review board, the committee would undoubtedly have to hire a hearing examiner to conduct the Federal adjudicatory hearing. The exemption procedure provided in H.R. 14104 will assure that all of the evidence will be reviewed by highly competent and professional appointees of the Secretary and Governor.

Although the exemption procedures involve a two-step process, the bill includes specific timetables to insure that an exemption application will receive immediate consideration. The review board is required to complete its hearings and make its recommendation within 180 days. The committee in turn is required to decide whether to grant an exemption within 90 days of receiving the recommendation of the review board.

C. Amendments to the listing process

H.R. 14104 includes several amendments to the endangered species listing process. These amendments were added to the legislation in order to correct a number of deficiencies that were highlighted in the course of the oversight hearings. The committee discovered that, all too often, the listing of a species or the designation of critical habitat occurs in a regulatory vacuum. There has been little or no effort made to publicize the regulatory proposal in the affected area or give the people most directly impacted by the proposed regulation an opportunity to effectively comment on it. Under the existing Act an individual would have to spot the regulatory proposal in the Federal Register in order to be aware of any potential listing or designation of habitat in his area.

The committee believes that the listing of a species or the designation of critical habitat is important enough to require the administering agencies to expand their notice procedures. H.R. 14104 would alleviate this problem by requiring actual notice of regulatory proposals to general units of government. In addition, the bill requires that any proposed designation of critical habitat be published in a local newspaper in the affected area. Finally, the bill would require informal public meetings on proposed critical habitat designations in the area of the habitat and more formalized hearings in the State. Added together, these provisions will insure that the Department of the Interior is not listing species and designating critical habitat without consulting the views of the people of the affected area. In addition, these provisions will serve to alert the Fish and Wildlife Service to possible conflicts between listed spcies and human activities. The committee believes that it is in everybody's interest for conflicts between the presence of endangered species and development activities to be discovered and resolved at the earliest possible opportunity.

D. Evaluation of economic impact of the designation of critical habitat for invertebrates

The ultimate goal of the Endangered Species Act is the conservation of the ecosystem on which all species, whether endangered or not, depend for survival. For this reason the Endangered Species Act protects all endangered and threatened members of the animal kingdom, not merely the so-called higher forms of life. Nevertheless, the committee recognizes that the large number of species and subspecies within the 21 nonvertebrate phyla could ultimately present serious conflicts with many Federal activities. The committee adopted a provision, which while continuing full protection for all listed species, does give the Secretary the discretion to alter a critical habitat designation for an invertebrate species if he determines that the economic benefits of excluding a portion of the critical habitat outweigh the benefits of designating the area as part of the critical habitat.

This provision is not intended to downgrade the status of invertebrate species. Rather, it is intended to avoid conflicts between invertebrate species and Federal activities at an early stage, without having to resort to the full exemption procedure.

SECTION-BY-SECTION ANALYSIS

Section 1 of H.R. 14104 contains the short title and enacting clause.

Section 2 of H.R. 14104 contains amendments to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).

Section 4(a)(1) of the Endangered Species Act of 1973 requires that the listing of any species as threatened or endangered is to be carried out by regulation published in the Federal Register. Paragraph 1 of section 2 of the bill has the additional requirement that the Secretary "to the maximum extent prudent" specify critical habitat at the same time as he publishes a regulation listing a species. The phrase "to the maximum extent prudent" is intended to give the Secretary the discretion to decide not to designate critical habitat concurrently with the listing where it would not be in the best interests of the species to do so.

As an example, the designation of critical habitat for some endangered plants may only encourage individuals to collect these plants to the species ultimate detriment. The committee intends that in most situations the Secretary will, in fact, designate critical habitat at the same time that a species is listed as either endangered or threatened. It is only in rare circumstances where the specification of critical habitat concurrently with the listing would not be beneficial to the species.

Section 4(b) of the act is amended by the addition of a new paragraph which specifies the way in which the critical habitat of invertebrate animal species is to be determined by the Secretary. In the new paragraph, the Secretary is directed to consider the economic and other relevant impacts of the inclusion of areas within a proposed critical habitat. The Secretary may exclude any area from a proposed critical habitat if he determines that the benefits of such an exclusion outweight the benefits of specifying the area as part of the critical habitat.

Up until this time, the determination of critical habitat has been a purely biological question. With the addition of this new paragraph, the determination of critical habitat for invertebrate takes on significant added dimensions. Economics and any other relevant impact shall be considered by the Secretary in setting the limits of critical habitat for such a species. The Secretary is not required to give economics or any other "relevant impact" predominent consideration in his specification of critical habitat for invertebrates. The consideration and weight given to any particular impact is completely within the Secretary's discretion.

In directly addressing the question of the specification of critical habitat for invertebrates, the committee was motivated by its knowledge of the large number of species and subspecies of invertebrates, their usually high rate of reproduction, and their relatively small critical habitat requirements. The result of the committee's proposed amendment would be increased flexibility on the part of the Secretary in determining critical habitat for invertebrates. Factors of recognized or potential importance to human activities in an area will be considered by the Secretary in deciding whether or not all or part of that area should be included in the critical habitat of an invertebrate species. The committee expects that in some situations, the resultant critical habitat will be different from that which would have been established using solely biological criteria. In some situations, no critical habitat would be specified. In such situations, the act would still be in force to prevent any taking or other prohibited act described in 16 U.S.C. 1538. In addition, agencies would still be prohibited from taking an action which would jeopardize the existence of the invertebrate species.

The committee amended H.R. 14104 to require a review of the Endangered and Threatened Species List at least once every 5 years. On the basis of this review, the Secretary would determine whether to: (1) remove any species from the list; (2) change the status of any listed species from endangered to threatened or threatened to endangered. Any determinations made pursuant to this review must be made in accordance with the criteria described in section 4(a) of the act and pursuant to the listing procedure described in section 4(b). The committee anticipates that the Secretary may decide to conduct the required review in increments. Any failure to review all of the species on the list would not invalidate the listing of any species.

Section 2 of H.R. 14104 also amends section 4(c) (1) of the act which presently requires the Secretary to publish a list of endangered or threatened species which also specifies the portion of its range in which the species is endangered or threatened.

The committee bill would amend section 4(c) (1) to require the Secretary to include critical habitat designations on the Endangered and Threatened Species List. The term "range" is used in the general sense, and refers to the historical range of the species. The committee believes, nonetheless, that the Secretary should be exceedingly circumspect in the designation of critical habitat outside of the presently occupied area of the species.

H.R. 14104 amends section 4(f) (2) (A) of the act to expand present notice requirements and to require public meetings or hearings in connection with the listing of a species and the specification of its critical habitat.

Under the committee bill, notice of a proposed regulation (including a complete text of the regulation) would have to be published in the Federal Register 60 days before its effective date. Where critical habitat is specified, such notice must also be published in a newspaper of general circulation within or adjacent to such habitat. Actual notice of the regulation and any environmental assessment or environmental impact statement prepared on it is required to be given to all general local governments within or adjacent to the proposed critical habitat at least 60 days prior to its effective date. This provision does not require actual notice to special districts such as an irrigation or school district. The committee expects that the Secretary would utilize OMB Circular A-95 or some similar device for assuring effective notice to local governments.

Where critical habitat is specified in the proposed regulation, the Secretary must promptly hold a public meeting on the proposed regulation. The meeting must be held in the area in each State where such habitat would be found. The committee intends that the meetings held pursuant to this paragraph be of an informal variety that would permit a colloquy between representatives of the Department and local citizens. If a timely request is filed with the Secretary, a public hearing must be held in the State whose citizen filed the request. It is the intent of the committee that such hearings be held in accordance with appropriate sections of the Administrative Procedures Act and near or within the proposed critical habitat. The committee does not intend that either the meetings or hearings be full adversarial proceedings with all of its inherent expenses to the parties and delays in arriving at a final regulation.

In the rather rare instances where no critical habitat is proposed concurrently with the listing, a public meeting is to be held by the Secretary if a request therefore is filed within 45 days of the publication of general notice.

If, by chance, actual notice is not given to some unit of general local government, such an unintentional and unplanned failure of the notification system shall not invalidate the proposed regulation.

H.R. 14104 adds a new paragraph (5) to section 4(f) which would provide that any final regulation adding a species to the list must be published within 2 years after the notice of proposed rulemaking. Any proposed listings not finalized within 2 years must be withdrawn, and cannot again be proposed unless Secretary determines that new information is available which warrants such action. The paragraph provides that any listing which is proposed at the time of the enactment of these amendments would not have to be withdrawn until one year after the date of enactment.

The bill adds a new subsection (g) to section 4 which would require the Secretary to develop and implement recovery plans for listed species. Such plans would be designed to ensure the conservation or survival of each listed species. Recovery teams may be appointed by the Secretary, where appropriate, to aid in developing or implementing a recovery plan for a particular species. Such plans shall be as long and as detailed as is necessary and consonant with their purpose of providing a framework for actions directed at conserving or, at least, insuring the survival of the subject species. Although recovery plans are implicit in the Endangered Species Act, the Act does not specifically mandate recovery plans. As a result, recovery plans have been given a low priority within the Endangered Species Act budget.

The committee intends the Secretary to establish recovery teams to assist with: (1) the development of plans; (2) periodic amendment of plans; and (3) the implementation of the plans. The committee hopes that the Secretary will appoint full-time professionals to insure that planning and implementation proceed expeditiously.

Section 3 of H.R. 14104 contains extensive amendments to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536).

As under the present law, the Secretary is required to make sure that all the programs administered by him are in concert with the purposes of the Endangered Species Act. Each Federal agency is directed to consult with the Secretary and to use its authorities to further the purposes of the Endangered Species Act by carrying out conservation programs for listed species.

Under H.R. 14104, each Federal agency is required to insure that any action authorized, funded or carried out by it does not result in species or habitat degradation unless the action has been exempted under later provisions of the bill. In setting about to insure that its actions will not result in species or habitat degradation, each agency is expected to make use of all available expertise both within its own organization and by consulting with the Secretary, the Smithsonian Institution, the Marine Mammal Commission, or other qualified groups or individuals.

Section 7(c)(1) requires that Federal agencies insure that their actions do not result in: (1) jeopardy to the continued existence of an endangered or threatened species; or (2) the destruction or adverse modification of any critical habitat of any such species. It is the responsibility of each agency to review its activities or programs to identify any such activity or program that may affect listed species or their habitat. If a Federal agency determines that its activities or programs may affect listed species or their habitat, the agency should request assistance from the Secretary.

Section 7(c)(2) defines the consultation process. If the Federal action agency or the Secretary determines that a proposed action may affect a listed species or its habitat, immediate consultation shall be undertaken. The consultation will assist in the development of alternatives to the proposed action, and will result in a written biological opinion by the Secretary detailing whether the proposed action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. The biological opinion will also discuss the alternatives and modifications to the proposed action which would avoid the impacts to the listed species or their habitats.

The search for alternatives in the consultation process should be limited to those that are "reasonable and prudent." The committee does not intend that the Secretary and the Federal agency should, at the consultation stage, be required to review all possible alternatives to the agency action including those inconsistent with the project's objectives and outside of the Federal agency's jurisdiction. It is the intent of the Committee that the consultation process be completed within 90 days or such time as is mutually agreed upon by the Secretary and the Federal agency.

The new Section 7(c)(3) is designed to stimulate the development of additional biological information to assist Federal agencies in complying with section 7.

It requires Federal agencies, with respect to actions for which no contract for construction has been entered into and no construction has begun on the date of enactment of this provision, to ask the Secretary whether any listed species is present in the area of any such proposed action. In responding, the Secretary is to rely on the best scientific and commercial data available. The end which this notification process is designed to accomplish is the early discovery of and elucidation of any conflicts between an agency action and a listed species.

After being notified that listed species may be present, the Federal agency is required to conduct a biological assessment. The assessment should concentrate on determining whether or not any listed species presence is likely to be adversely affected by the agency action. No contract for construction may be entered into nor may construction begin while the biological assessment process is under way. The assessment may be prepared in conjunction with the NEPA process. It is the intent of the committee that this review process take place well before the exercise of agency discretion which would result in contracts for construction, actual construction activities, or other potentially destructive activity.

The committee notes that some biological assessments may harass or harm listed species to the extent that a permit would be required to conduct the assessment. If that is the case, the Federal agency would be required to apply to the Secretary for a permit under the provisions of the Act.

The new section 7(c)(4) of the act would further strengthen the consultation process. It prohibits any Federal agency from making any irreversible or irretrievable commitment of resources once consultation has been initiated if such commitment would have the effect of foreclosing efforts to avoid the adverse impacts on the species or their critical habitat.

H.R. 14104 includes a new section 7(d) detailing the creation of a review board and setting forth the manner in which applications for a project exemption are to be processed.

The exemption process is begun by the filing of an application with the Secretary by either the Federal agency, the Governor of the State in which the agency action will occur, or an applicant for a permit or license required under Federal law. The reference to States in which the agency action will occur is intended to apply to those States where the project, species and critical habitat are located. It is not intended to include States whose only nexus to the agency action is the issuance of a Federal permit, license or grant. An application may only be filed if, after consultation, it is the Secretary's opinion that the agency action may result in species or habitat degradation. The application must be filed within 90 days after completion of the consultation process. The application must contain a statement detailing the reasons why the agency action is qualified for an exemption.

Upon receipt of the application for exemption, the Secretary must promptly notify the Governor or Governors of any State(s) in which the agency action is being carried out and request their appointment of a member of the review board. The committee intends the Secretary to have sole discretion to determine which States are affected by the Endangered Species Act conflict and which Governors should be notified under this provision.

The review board is to consist of three members. One is appointed by the Governor or Governors, one by the Secretary, and the third is selected by the first two within 15 days of the appointment of the second. If the two appointees are unable to agree on a third member, the Endangered Species Committee is directed to select the third member.

Within 60 days of receiving the application, the Secretary is to submit to the review board his written views on the matter and his recommendations as to the final disposition of the matter.

The review board is given 60 days after the appointment of its third member to make its initial determinations. A longer period of time may be taken if agreed to between the Secretary and the agency. The board acts by majority vote in determining whether the Federal agency has met three requirements which are preconditions to further action on the exemption application. First, there must be a determination that the agency has consulted with the Secretary in good faith and has made a reasonable and responsible effort to consider modifications or alternatives which would avoid species or habitat degradation. Secondly, the agency must have conducted a biological assessment if one is required under new section 7(c)(3). Thirdly, the agency must have made no irreversible or irretrievable commitment of resources as prohibited under section 7(c)(4).

If the review board makes a positive determination on these three matters, it may proceed to conduct a hearing and forward a recommendation on the matter of whether or not an exemption should be granted. A recommendation favoring an exemption may be made to the Endangered Species Committee if a majority of the review board finds, after conducting a formal adjudicatory hearing, that: (1) there are no "feasible and prudent" alternatives to the agency action; (2)

the benefits of the agency action clearly outweigh the benefits of alternative course of action consistent with conserving the species or its critical habitat, and that such action is in the public interest; and (3) the action is of national or regional significance.

The terms "feasible and prudent" alternatives are intended to insure that the review board evaluates a wide variety of alternatives to the agency action before recommending an exemption from the act. During the consultation process, the Secretary and the Federal agency are required to evaluate a narrower range of possible alternatives to the proposed action. The committee believes that the search for alternatives before the review board should be significantly larger than during the consultation stage. Section 7 consultation is intended to focus attention on the agency action, its objectives, and the aspects of the agency action which gave rise to the problem initially. The focus of a section 7 consultation should be on solving the problem in a way which is clearly within the jurisdiction and expertise of the consulting parties.

In contrast, the review board and the Endangered Species Committee should focus on a wider variety of alternatives. Their search should not be limited to original project objectives or the acting agency's jurisdiction. The Committee does intend that the review board should only consider alternatives which are both technically capable of being constructed and prudent to implement.

The second criteria considered by the review board involves an evaluation of the benefits of the agency action and an evaluation of the benefits associated with alternatives which would avoid an adverse impact on the species or its habitat.

In the context of this provision, the committee intends that the term "benefits" shall include, but not be limited to, ecological and economic considerations. Among the economic criteria which may be examined and considered by the review board and the Endangered Species Committee are those set forth in OMB Circular A-107 and in Executive Order 11949. These include:

(1) the cost impact on consumers, business markets, Federal, State, and local governments;

(2) the effect on productivity of wage earners, businesses and government;

(3) the effect on competition;

(4) the effect on supplies of important materials, products, and services;

(5) the effect on employment; and

(6) the effect on energy supply and demand.

The Committee does not intend, however, that the review board and Endangered Species Committee evaluation should be limited to these criteria. They should also consider the national interest, including actions authorized, funded or carried out by the Secretary of Defense; the esthetic, ecological, educational, historical, recreational and scientific value of any endangered or threatened species; and any other factors deemed relevant.

The committee notes that the amendment requires the review board and the committee to balance the benefits associated with the agency action against the benefits associated with alternative courses of action.

They should not balance the benefits of the action against the value associated with the listed species.

To be "in the public interest," an agency action must affect some interest, right or duty of the community at large in a way which they would perceive as positive.

The third finding required before the board may recommend that an exemption be granted is that the agency action be of "national or regional significance." The term "regional significance" is not intended ot refer merely to projects which affect more than one State. Rather, the committee believes that the review board and the Endangered Species Committee should evaluate the nature, as well as the scope of the project, in their determination of whether an action is nationally or regionally significant. As an example, the committee believes that an action affecting the Port of Sacramento, in California, would be regionally significant.

Unless otherwise agreed between the applicant and the Secretary, the review board has 180 days after the initiation of the hearing to submit its recommendation. The recommendation shall include the board's view on the propriety of granting an exemption as well as any reasonable mitigration and enhancement measures to be considered by the committee.

The record of the review board's proceedings is to be transmitted to the Endangered Species Committee along with the board's recommendation. The review board has the power to request on a nonreimbursable basis the assistance of agency personnel from the head of any Federal agency. This would include the power to request the services of an administrative law judge to assist in the conduct of the hearing. The review board should make maximum use of this procedure and should minimize reliance on personnel provided on a reimbursable basis by the GSA. Even if the review board procures the services of a hearing examiner, the committee intends the members of the review board to be physically present during the hearing. The committee believes that the presence of the review board during the formal hearing will assist in the development of a sound and comprehensive recommendation to the Endangered Species Committee.

The committee does not intend that either the review board or the Endangered Species Committee should be considered as Federal agencies except as provided for in the bill. The Federal Advisory Committee Act shall not be applicable to either the review boards or the Endangered Species Committee.

Section 7(e) establishes the Endangered Species Committee. The committee is to be composed of six members: The Secretary of Agriculture: the Secretary of the Army; the Secretary of the Interior; the Administrator of the National Oceanic and Atmospheric Administration; the Chairman of the Council on Environmental Quality; and the Governor or Governors of the State or States within which the agency action in question will occur.

The committee is to meet at the call of its Chairman, the Chairman of the Council on Environmental Quality. It has 90 days from the date it receives the review board's recommendation to decide whether or not to grant the agency action an exemption from new subsection 7(c)(1).

An exemption may only be granted by four of the committee's members, voting in person, and after a determination is made on the record. The committee may base its determination on the record developed by the review board, but has the power to itself receive testimony and evidence. The committee does not expect the Endangered Species Committee to conduct a second final adjudicatory hearing. The criteria the committee is to use in making its determination are identical to those considered by the review board in making its recommendation. If the committee grants an exemption, it must require reasonable mitigation and enhancement measures be taken by the successful applicant.

The phrase "reasonable mitigation and enhancement measures" is used in several places in the legislation to describe actions which shall be taken by an applicant which receives an exemption. The required actions must be "reasonable" in their cost, likelihood of protecting the listed species, and the availability of the technology required to make them effective, and other considerations deemed relevant by the Endangered Species Committee. The explanation of the phrase in new Section 7(f)(2) makes it clear that "reasonable mitigation and enhancement measures" are those actions by the applicant which are necessary and appropriate "to minimize the adverse effects of the agency action" on the species or habitat in question. Live propogation, transplantation, and habitat acquisition and improvement are mentioned as specific examples of actions a successful applicant might be required to take.

The Committee's final determination is subject to judicial review in the district court for any district where the agency action will be located. This refers to the location of the project where the project will be carried out, and not the district where a permit or license might be issued.

The Committee may not grant an exemption if the Secretary of State gives it written certification that the granting of the exemption and the resultant agency action would violate an international treaty or other international obligation of the United States. The certification must be made within 60 days after the Committee receives the application for exemption and must be published in the Federal Register. The phrase "other international obligation" should be understood to mean a formal, legal obligation of the United States Government. This provision would apply to the Agreement on the Conservation of Polar Bears, signed November 15, 1973; the U.S.-Japan Migratory Bird Convention; as well as the recently ratified U.S.-Russian Migratory Bird Treaty.

When the Committee formally issues its order exempting an agency action, any reasonable mitigation and enhancement measures must be spelled out in the document. New section 7(h) makes it clear that such measures are to be carried out and paid for by the party receiving the exemption. In the case of a Federal agency action, the mitigation and enhancement measures required under 7(f) must be authorized by the Congress prior to implementing the action. Such measures would also have to be funded by the Congress concurrently with all other project features. The reasonable mitigation and enhancement measures required under 7(f) must actually be funded and carried out for the exemption to be effective.

The costs of the mitigation and enhancement measures are to be considered project costs for all purposes except for the computation of benefit-cost or other ratios.

Agencies receiving an exemption are required to submit annual reports to the Council on Environmental Quality describing compliance with ordered mitigation and enhancement measures.

The bill adds a new section 7(j) which would allow the President to grant an exemption for replacement and repairs on public facilities necessary to prevent recurrence of a natural disaster which resulted in a Presidential declaration of a Federal disaster area.

H.R. 14104 adds a new Section 7(k)(1) which indicates that the granting of an exemption is not a major Federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if an environmental impact statement which discusses impacts on endangered or threatened species or their critical habitats has been prepared on the agency action.

The committee included section 7(k)(2) in recognition of the fact that even though a project might be exempted from the requirements of section 7, section 9 of the act would still prohibit the "taking" of any endangered animal species.

Section 4 of H.R. 14104 authorizes appropriations to the Departments of Interior and Commerce to carry out the purposes of the act through fiscal year 1981.

Section 5 of H.R. 14104 defines a number of terms used in the Endangered Species Act.

The term "critical habitat" is defined for the first time. The definition is modeled after that found in present Department of the Interior regulations. Under the present regulations, critical habitat includes air, land or water areas—the loss of which would appreciably decrease the likelihood of conserving a listed species. Under the present regulations, the Secretary could designate as critical habitat all areas, the loss of which would cause any decrease in the likelihood of conserving the species so long as that decrease would be capable of being perceived or measured.

In the committee's view, the existing regulatory definition could conceivably lead to the designation of virtually all of the habitat of a listed species as its critical habitat.

Under the definition of critical habitat included in H.R. 14104, air, land or water areas would be designated critical habitat only if their loss would significantly decrease the likelihood of conserving the species in question. The committee believes that this definition narrows the scope of the term as it is defined in the existing regulations.

Section 5(2) of H.R. 14104 redefines the term "species" as it is used in the act. The existing definition of "species" in the act includes subspecies of animals and plants, taxonomic categories below subspecies in the case of animals, as well as distinct populations of animal "species." The definition included within the committee bill would exclude taxonomic categories below subspecies from the definition as well as distinct populations of invertebrates.

Section 5(4) of H.R. 14104 defines "species or habitat degradation" to include of the following effects: (1) jeopardy to the continued existence of any endangered or threatened species and/or (2) the destruction or adverse modification of any critical habitat of such species.

By inserting this new phrase, the committee does not intend to modify the definitions of these terms as presently defined by the agencies or the Supreme Court in *Tennessee Valley Authority* v. *Hill et al.*

Section 7 of H.R. 14104 amends section 6(c) of the Act to allow the Secretary of the Interior to enter into cooperative agreements with the States for the management and conservation of listed species of plants. This amendment will permit States which develop an adequate and active program for the conservation of listed plants to receive Federal grant-in-aid in the same manner as States now receive funds for resident species of endangered and threatened fish and wildlife.

Section 8 of H.R. 14104 amends section 11 of the Act, the penalties and enforcement section. All changes to this section have been made after extensive consultation with the Department of Justice.

The amendment reduces the strict liability penalty for others than importers and exporters to $500, makes criminal violations of the act a general rather than a specific intent crime, and subjects importers and exporters of fish and wildlife and plants to strict liability penalties of up to $10,000.

By deleting from the civil penalty and criminal provisions of section 11 the phrase, "commits an act which violates," the committee intends only to make it clear that the act's civil and criminal sanctions apply to violations involving an omission or failure to act as well as to violations involving the commission of a prohibited act. The committee does not intend to make knowledge of the law an element of either civil penalty or criminal violations of the Act. In furtherance of this intent, the committee has reduced the standard for criminal violations from "willfully" to "knowingly".

Under the amendment provided in H.R. 14104 a tourist who unknowingly imports a listed species into the United States could not be fined more than $500. The committee assumes that in most cases, law enforcement officials will seek the forfeiture of the item rather than impose a civil penalty. The committee emphasizes that the strict liability provision which applies to persons engaged in the business an an importer or exporter of fish, wildlife or plants does not apply to commercial fishing operations which may import fish products into the United States for purposes of human or animal consumption as a part of their business.

Section 9 of H.R. 14104 provides the Secretary and the Secretary of Agriculture with the authority to acquire land for the conservation of listed species including plants. The current act limits this authority to the Secretary of the Interior.

Section 10 of H.R. 14104 provides an exemption from the prohibitions in the act for the raptors legally held in captivity or in a controlled environment on the date of enactment of the Endangered Species Act, as well as the progeny of such raptors. Prohibitions contained in the present law to prevent commerce in endangered species have impeded captive breeding efforts by responsible falconers, conservationists, and biologists.

Unless specified in other laws, H.R. 14104 would exempt raptors held prior to the enactment of the Endangered Species Act of 1973 from the provisions and prohibitions of that act. The domestic captive-produced progeny of any such legally held raptor, whether produced before, on, or after December 28, 1973, would also be exempted from the provisions and prohibitions of the Act.

In order to encourage breeding of raptors in captivity, the domestic captive-bred progeny of all raptors legally taken from the wild after December 28, 1973, shall be treated the same as those of raptors captured prior to enactment of the present law. This is designed to alleviate human pressures on wild raptor populations. It will also increase the genetic diversity of captive populations and further encourage domestic production of raptors for conservation, recreational, scientific and breeding purposes. When domestic captive-bred raptors are intentionally released and returned to a wild state for conservation and reintroduction purposes, such raptors are thereafter entitled to the full protection of the act.

The Secretary may require the owners of all exempted raptors to keep records and required bands or other permanent markings to distinguish them from wild birds. The records and inventories may be inspected by agents of the Secretary at reasonable times. These records, permanent markers and inventory procedures should not unnecessarily duplicate those now required under the Migratory Bird Treaty Act for special purpose permits and falconer permits. The Secretary may promulgate such reasonable regulations which allow for the use, exchange, movement, import or export of legally held raptors or their domestic captive-bred progeny.

Nothing in this amendment shall be construed as a diminution of the protection of wild populations of raptors under the act.

Section 11 of H.R. 14104 amends section 10 of the act by exempting certain antique articles other than scrimshaw from the application of sections 4(d) and 9(a) of the act. Such articles are exempt from those sections if they were made before 1830, are composed in whole or part of any listed species, have not been repaired or modified with any listed species part or product thereof prior to enactment of the Act (December 28, 1973), and enter the United States through a port specially designated by the Secretary of the Treasury.

The committee chose the 1830 date with the understanding that antique articles produced priod to this date can be readily distinguished from those made after 1830.

COST OF THE LEGISLATION

In the event the legislation is enacted into law, and the moneys authorized are fully appropriated, the committee estimates the maximum cost to the Federal Government—after comparing and analyzing the information supplied by the Government agencies and their representatives and the Congressional Budget Office—for the 3 year extension of the act would be $26 million for fiscal year 1979; and $28.5 million for fiscal year 1980; and $31 million for fiscal year 1981.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the committee estimates that the enactment of H.R. 14104 would have no significant inflationary impact on the prices and costs in the national economy.

Compliance With Clause 2(1)(3) of Rule XI

With respect to the requirements of clause 2(1)(3) of Rule XI of the Rules of the House of Representatives—

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment held eight days of oversight hearings on the Endangered Species Act during the 95th Congress.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 2(b)(2) of Rule X.

(D) A letter was received from the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974 in reference to H.R. 14104 and follows herewith.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 22, 1978.

Hon. John M. Murphy,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives,
Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 14104, the Endangered Species Act Amendments of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Robert A. Levine
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 22, 1978.

1. Bill No.: H.R. 14104.
2. Bill title: Endangered Species Act Amendments of 1978.
3. Bill status: As ordered by the House Committee on Merchant Marine and Fisheries, September 19, 1978.
4. Bill purpose: The bill establishes an Endangered Species Committee and requires the formation of review boards to examine the decisions of the Secretary of the Interior as to whether an agency's action would be hazardous to endangered species and their critical habitat area. Such a determination by the Secretary would prohibit the agency's action. Except in special cases, such as cases relating to international treaty obligations as determined by the Secretary of State or cases pertaining to disaster are as declared by the President, the Endangered Species Committee would make the final governmental decision by either approving or disapproving the agency's action. If an agency exemption is granted for pertinent reasons, any person may obtain judicial review of the decision. This bill provides an authorization of $500,000 in each of the fiscal years 1979, 1980, and 1981 to cover the expenses of both the Committee and the review boards

In addition, the bill provides authorizations of $23 million for fiscal year 1979, $25 million for fiscal year 1980, and $27 million for fiscal year 1981 to the U.S. Fish and Wildlife Service (USFWS) to carry out its responsibilities under the Endangered Species Act. It also authorizes the appropriation of $2.5 million in fiscal year 1979, $3.0 million in fiscal year 1980, and $3.5 million in fiscal year 1981 to the Department of Commerce for the National Oceanic and Atmospheric Administration (NOAA).

5. Cost estimate:

[Fiscal years; in millions of dollars]

	Fiscal year—				
	1979	1980	1981	1982	1983
Authorization level	26.0	28.5	31.0		
Cost estimate	24.4	28.3	30.9	1.9	

Note: The costs of this bill fall within budget subfunction 303.

6. Basis of estimate: The authorization levels are those stated in the bill and are assumed to be fully appropriated. Costs are estimated by applying a 2-year outlay rate to the level of appropriation authorized for NOAA, USFWS, and the expenses of the review committees. Spendout rates for NOAA and USFWS were developed in consultation with agency staffs. It was estimated that the 2-year outlay rate for the appropriation provided for the review committees would be 60 percent the first year and 40 percent the second year.

7. Estimate comparison: None.

8. Previous CBO estimate: A cost estimate was prepared on March 22, 1978, for H.R. 10883, as ordered reported by the House Committee on Merchant Marine and Fisheries. This bill provided the same authorization as H.R. 14104 for the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The only additional cost of H.R. 14104 is related to the higher authorization of $500,000 for the expenses of the review boards and the Endangered Species Committee.

CBO also prepared a cost estimate on May 12, 1978, for S. 2889, as ordered reported by the Senate Committee on Environment and Public Works. This bill provided higher authorizations for fiscal years 1979, 1980, and 1981. The bill also established an Endangered Species Committee.

9. Estimate prepared by James V. Manaro.

10. Estimate approved by: C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

DEPARTMENTAL REPORTS

H.R. 14104 was the subject of a report from the Department of Justice. This report follows:

DEPARTMENT OF JUSTICE,
Washington, D.C., September 22, 1978.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We would like to proffer the comments of the Department of Justice on H.R. 13807, the "Endangered Species Act

Amendments of 1978," as reported by the Committee on Merchant Marine and Fisheries on September 19, 1978.

This Department takes no position on the merits of this legislation, however, we would like to discuss those portions of Section 3 of the bill which provide for the establishment of a "Review Board" and an "Endangered Species Committee." In our opinion, the procedure for establishment of these bodies raises issues of a constitutional dimension. Under that section these new entities would review and act on applications for federal project exemptions under the Endangered Species Act. Specifically, in the case of an application for exemption, the Review Board, after making certain threshold determinations informally, would make findings on the record after a formal adjudicatory hearing under the Administrative Procedure Act; and these findings would serve as a basis for the board's recommendation on the exemption question. This recommendation would then be presented to the Endangered Species Committee which would make an independent determination on the exemption question in accordance with standards set forth in the amendment. The Committee's decision would be the final action in the administrative process and would be subject to judicial review. Attorneys designated by the Committee would represent the Committee in any review proceeding.

Under the bill, the adjudicatory and ancillary powers exercised by the Committee fall clearly within the category of functions which, under *Buckley* v. *Valeo*, 424 U.S. 1 (1976), may be exercised only by persons who have been appointed pursuant to Article II, § 2, cl. 2 of the Constitution. Five of the six members of the Committee are to be appointed in accordance with that clause, but the sixth (the Governor of the State in which the agency action in question will occur) will not be appointed in that way. Under *Buckley* v. *Valeo*, supra, the constitutionality of the Committee is in substantial doubt because of this infirmity in the appointment mechanism.

We have similar concerns with regard to the Review Board. Because the Board's ultimate powers are only recommendatory, it could be argued that its powers are "sufficiently removed from the administration and enforcement of public law to allow [them] to be performed by" persons not appointed pursuant to the Appointments Clause. *Id.* at 141. But under at least one interpretation of the bill, the Board would have effective power, in some cases, to take dispositive action with respect to applications, since it need not consider an application at all unless it determines that certain preliminary requirements have been met. See Subsection (d)(5). The Review Board must consider an application on the merits before the exemption question can reach the Committee. This apparent screening function plays a central role in the administrative scheme, and for this reason we believe it difficult to argue that the Review Board is not engaged in "administration and enforcement of public law." Accordingly, we think that the mechanism for appointing Board members should conform with the Appointments Clause. Under the bill, two members of the Board (the appointee of the Governor of the affected State, and the member appointed by that appointee and the appointee of the Secretary of the Interior) are not appointed in accordance with the Appointments Clause.

These infirmities could be corrected as follows:

A. Review Board

The Review Board would be constitutionally constituted were all of its members appointed pursuant to Art. II, § 2, cl. 2, i.e., either by the President or the Secretary.*

B. The Endangered Species Committee

If voting rights were denied to the Governors of the affected States, we think that they could otherwise participate in the Committee decisions without casting doubt on those decisions. Because they hold their position by virtue of their state office, we do not believe that the formality of a Presidential "appointment" of them to the Committee would solve the constitutional problem.

Department representatives have discussed the concerns noted above with the committee staff. We will be happy to continue to work with the staff in order to obviate the problems noted.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Patricia M. Wald,
Assistant Attorney General.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic: existing law in which no change is proposed is shown in roman):

ENDANGERED SPECIES ACT OF 1973, AS AMENDED

(16 U.S.C. 1531–1543; Pub. Law 93–205)

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species.
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endangered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.
Sec. 17. Marine Mammal Protection Act of 1972.

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*While an appointment by the courts is technically permissible, we do not believe that would be appropriate here.

FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however*, That

it does not include exhibition of commodities by museums or similar cultural or historical organizations.

(2) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(3) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(4) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(5) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(6) The term "critical habitat" for an endangered species or threatened species means any air, land, or water area (exclusive of those existing manmade structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would significantly decrease the likelihood of conserving such species.

[(5)**]** *(7)* The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

[(6)**]** *(8)* The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

[(7)**]** *(9)* The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

[(8)](*10*) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

[(9)](*11*) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

[(10)](*12*) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

[(11) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.]

(13) The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct segment of the population of any species of vertebrate fish or wildlife which interbreeds when mature.

[(12)](*14*) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

[(13) The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.]

(15) The term "State agency" means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

[(14)](*16*) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

[(15)](*17*) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

[(16)](*18*) The term "United States", when used in a geographical context, includes all States.

(19) The term "species or habitat degradation" means either or both of the following effects:

(A) The placing in jeopardy of the continued existence of any endangered species or threatened species listed pursuant to section 4.

(B) The destruction or adverse modification of any critical habitat of any endangered species or threatened species so listed.

(20) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied because of the application of section 7(c)(1) to such agency action.

DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

SEC. 4. (a) GENERAL.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat. The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to enactment of the Endangered Species Act Amendments of 1978.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any such case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species,

he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(b) BASIS FOR DETERMINATIONS.—(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

(4) *In determining the critical habitat of any endangered or threatened invertebrate animal species, the Secretary shall consider the economic impact, and any other relevant impacts, of specifying and particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat.*

(c) LISTS.—(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he may be regulation revise, a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, [and shall] specify with respect to each such species over what portion of its range it is endangered or threatened, *and specify any critical habitat within such range.*

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species proposed to be removed from or added to either or the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such

person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list in effect on the day before the date of the enactment of this Act of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this Act, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this Act. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5, United States Code.

(4) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b).

(d) Protective Regulations.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(a) of this Act only to the extent that such regulations have also been adopted by such State.

(e) Similarity of Appearance Cases.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(f) Regulations— (1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section the provisions of section 553 of title 5, United States Code (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

[(2) (A) In the case of any regulation proposed by the Secretary to carry out the purposes of this Act—

[(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

[(ii) if any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall if he denies such request, publish his reasons therefor in the Federal Register.]

(2)(A) *In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—*

(i) shall publish notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation—

(I) in the Federal Register, and

(II) if the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat; and

(ii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat;

(iii) shall—

(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation, if request therefor is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each such State.

If a public meeting or hearing is held on any regulation, the regulation may not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. Any accidental failure to provide actual notice under clause (ii) to all general local governments required to be given notice shall not invalidate the proposed regulation.

(B) Neither subparagraph (A) of this paragraph nor section 553 of title 5, United States Code, shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

(i) Any regulation appropriate to carry out the purposes of this Act which was originally promulgated to carry out the Endangered Species Conservation Act of 1969.

(ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b)(1)(A) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

[(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a statement by the Secretary of the facts on which such regulation is based and the relationship of such facts to such regulation.]

(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations.

(4) Any proposed or final regulation which specifies any critical habitat of any endangered species or threatened species shall be based on the best scientific data available, and the publication in the Federal Register of any such regulation shall, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be impacted by such designation.

(5) A final regulation adding a species to any list published pursuant to subsection (c) shall be published in the Federal Register not later than two years after the date of publication of notice of the regulation proposing such listing under paragraph (2)(A)(i). If a final regulation is not adopted within such two-year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the Federal Register not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before the date of the enactment of the Endangered Species Act

Amendments of 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on such date of enactment.

(g) Recovery Plans.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation or survival of endangered species and threatened species listed pursuant to this section. The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

LAND ACQUISITION

Sec. 5. [(a) Program.—The Secretary of the Interior shall establish and implement a program to conserve (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 4 of this Act; or (B) plants which are concluded in Appendices to the Convention. To carry out such program, he—]

(a) Program.—The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Acquisitions.—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

COOPERATION WITH THE STATES

Sec. 6. (a) General.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) Management Agreements.—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

(c) Cooperative Agreements.—*(1)* In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this [subsection,] *paragraph*, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

[(1)](*A*) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

[(2)](*B*) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary:

[(3)] (*C*) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

[(4)] (*D*) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident [endangered species or threatened species;] *endangered or threatened species of fish or wildlife;* and

[(5)] (*E*) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened; or

that under the State program—

[(A)] (*i*) the requirements set forth in [paragraphs (3), (4), and (5) of this subsection] *subparagraphs* (*C*), (*D*), *and* (*E*) *of this paragraph* are complied with, and

[(B)] (*ii*) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to [subparagraph (A) and this subparagraph] *clause*(*i*) *and this clause* shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(*2*) *In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains* *an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually reconfirm such finding, that under the State program—*

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.

(d) ALLOCATION OF FUNDS.—(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) REVIEW OF STATE PROGRAMS.—Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS.—Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

(g) TRANSITION.—(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on the date of enactment of this Act and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after such date of enactment, or (B) the date of the close of the 15-month period following such date of enactment.

(2) The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to section 6(c) of this Act (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5, United States Code, or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) APPROPRIATIONS.—For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

(1) $10,000,000 through the period ending September 30, 1977.

(2) $16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.

[INTERAGENCY COOPERATION

[SEC. 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.]

INTERAGENCY COOPERATION

SEC. 7. (a) REVIEW BY SECRETARY.—The Secretary shall review all other programs administered by him and utilize such programs in furtherance of the purposes of this Act.

(b) AGENCY CONSERVATION PROGRAMS.—Each Federal agency shall, after consultation with and with the assistance of the Secretary, utilize its authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4.

(c) AGENCY ACTION.—(1) Each Federal agency shall insure that any action authorized, funded, or carried out by the agency (hereinafter in this section referred to as an 'agency action') does not result in species or habitat degradation unless an exemption has been granted by the Endangered Species Committee under subsection (f) with respect to such agency action.

(2) If any Federal agency—

(A) considers that any agency action over which it has jurisdiction may result in species or habitat degradation; or

(B) is notified by the Secretary that the Secretary considers that such agency action may have such a result;

the Federal agency and the Secretary shall undertake immediate consultation with respect to the matter, including, but not limited to, consultation to determine if reasonable and prudent alternatives are available. Consultation under this paragraph with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary: Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing whether the agency may result in species or habitat degradation and whether there are reasonable and prudent alternatives which would avoid species or habitat degradation which can be taken by the Federal agency in implementing the agency action.

(3) To facilitate compliance with the requirements of paragraph (1), each Federal agency shall, with respect to any action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any listed species may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed before any contract for construction is entered into and before construction is begun with respect to such action. Such assess-

ment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(4) After initiation of consultation required under paragraph (2), the Federal agency shall not make any irreversible or irretrievable commitments of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid species or habitat degradation.

(d) APPLICATION FOR EXEMPTION AND CONSIDERATION BY REVIEW BOARD.—(1) A Federal agency, the Governor of the State in which the Federal agency action will occur, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if after consultation under subsection (c)(2) the Secretary's opinion indicates that the agency action may result in species or habitat degradation. An application for an exemption shall be considered initially by a review board in the manner provided in this subsection, and shall be considered by the Endangered Species Committee for a final determination under subsection (f) after a recommendation is made by the review board.

(2)(A) Any Federal agency, Governor, or permit or license applicant seeking an exemption under this subsection shall submit a written application to the Secretary, in a form prescribed by the Secretary, not later than 90 days after the completion of the consultation process. Such application shall set forth the reasons why the Federal agency, Governor, or permit or license applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of the application for exemption referred to in paragraph (1), the Secretary shall promptly notify the Governor or Governors of the affected States, as determined by the Secretary, and request that they appoint a member of the review board to be established under paragraph (3) in accordance with the provisions of such paragraph.

(3)(A) A review board consisting of three members shall be established for purposes of considering an application for examination and making recommendations to the Endangered Species Committee under this subsection as follows:

(i) The Secretary and the Governor of the affected State shall each appoint one individual to the board not later than 15 days after a request is submitted pursuant to paragraph (2). If more than one State is affected by the agency action, the Governors of such States shall appoint one individual collectively.

(ii) The two individuals appointed under clause (i) shall appoint one individual not later than 15 days after both of them have been appointed. If no appointment is made within such 15-day period, the Endangered Species Committee shall appoint, by a vote of a majority of the members of the Committee, one individual not later than 30 days after the end of such 15-day period.

(B) Members of a review board who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the board. All other members shall be entitled to

receive an amount not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day during which they are engaged in the actual performance of duties vested in the board. While away from their homes or regular places of business in the performance of services for a review board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(4) The Secretary shall submit the application to the review board immediately after its appointment under paragraph (3), and the Secretary shall submit to the review board in writing, his views and recommendations with respect to the application within 60 days after receiving a copy of any application under paragraph (2).

(5) It shall be the duty of a review board appointed under paragraph (3) to make a full review of the consultation carried out under subsection (c)(2), and within 60 days after its appointment or within such longer time as is mutually agreed upon between the agency and the Secertary, to make a determination, by a majority vote, whether such agency has—

(A) carried out its consultation responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to its proposed action which will avoid species or habitat degradation;

(B) conducted any biological assessment required of it by subsection (c)(3); and

(C) refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (c)(4).

Any determination by the review board that the agency has not met the requirements of subparagraph (A), (B), or (C) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(6) If the review board makes positive determinations under subparagraphs (A), (B), and (C) of paragraph (5), it shall proceed to consider the application for exemption. In considering any application for an exemption, a review board shall take into account the reasons for an exemption set forth in the application of the Federal agency, Governor, or permit or license applicant; the views of the Secretary submitted under paragraph (4), and the views of other Federal and State agencies and appropriate persons. The review board shall recommend an exemption from the requirements of subsection (c)(1) for any agency action if, by a majority vote, it determines on the record after an opportunity for a hearing held in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5 of the United States Code, that—

(A) there are no feasible and prudent alternatives to the agency action;

(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

(C) the action is of national or regional significance.

The review board shall recommend to the Endangered Species Committee whether or not to grant an exemption within 180 days after the hearing described in this paragraph is initiated, or within such other time as is mutually agreed upon by the applicant and a majority of the review board. If the review board recommends an exemption it shall include with its recommendation any reasonable mitigation and enhancement measures which should be considered by the Endangered Species Committee under subsection (f). The review board shall transmit the record of its proceedings and its recommendation to the Committee.

(7) In carrying out its duties under this subsection, a review board may, and any member of a review board if so authorized by the review board, may—

(A) sit and act at times and places, take such testimony, and receive such evidence, as the review board deems advisable;

(B) subject to the Privacy Act of 1974, request of any Federal agency information necessary to enable it to carry out such duties, and upon such request the head of such Federal agency shall furnish such information to the review board; and

(C) use the United States mails in the same manner and upon the same conditions as a Federal agency.

(8) Upon request of a review board, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the review board to assist it in carrying out its duties under this section.

(9) The Administrator of the General Services shall provide to a review board, on a reimbursable basis, such administrative support services as the review board may request.

(10) All meetings and records of review boards shall be open to the public.

(e) ESTABLISHMENT OF COMMITTEE.—There is established a Committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall be composed of six members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Secretary of the Interior.

(D) The Administrator of the National Oceanic and Atmospheric Administration.

(E) The Chairman of the Council on Environmental Quality.

(F) The Governor of the State in which the Federal agency action for which an exemption is sought under this section will occur (or in the case of any agency action which will occur in more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee).

(3) The Chairman of the Council on Environmental Quality shall be the Chairman of the Committee.

(4) Members of the Committee shall receive no additional pay on account of their service on the Committee; except that while away from their homes or regular places of business in the performance of

services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5) The Committee shall meet at the call of the Chairman or four of its members.

(6) All meetings and records of the Committee shall be open to the public.

(7) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony and receive such evidence as the Committee deems desirable.

(f) EXEMPTION.—The Committee shall make a final determination whether or not to grant an exemption within 90 days of receiving the recommendation of the review board under subsection (d)(6). The Committee shall grant an exemption from the requirements of subsection (c)(1) for an agency action if, by a vote of not less than four of its members voting in person—

(1) it determines on the record, based on the recommendation and the record of the review board and on such other testimony or evidence as it may receive, that—

(A) there are no feasible and prudent alternatives to the agency action;

(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

(C) the action is of regional or national significance; and

(2) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(g) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(h) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (f) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemp-

tion and specifying the mitigation and enhancement measures established pursuant to subsection (f) which shall be carried out and paid for by the Federal agency in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The Federal agency receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any Federal agency may request the Secretary to carry out such mitigation measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the agency or the permit or license applicant receiving the exemption. No later than one year after the granting of an exemption, the agency to which the exemption was granted shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the agency preparing such reports.

(i) Judicial Review.—Any person, as defined by section 3(8) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (f) in the district court of the United States for any district wherein the agency action concerned will be, or is being, carried out by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in, any action for review under this subsection. Any action for review under this subsection shall receive preference over other matters before the court and shall be heard and determined as expeditiously as the court considers practicable.

(j) Exemptions in Presidentially Declared Disaster Areas.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authtorized to make the determinations required by subsection (f) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

(k) Special Provisions.—(1) An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): Provided, That an environmental impact statement

which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(2) Notwithstanding sections 4(d) and 9(a), or any regulation issued to carry out such sections, no act or activity engaged in which is necessary to carry out any agency action for which an exemption is granted under this section shall be considered to be a taking of any endangered species or threatened species.

(l) Authorizaton.—There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (d), (e), and (f) of this section not to exceed $500,000 for fiscal year 1979, not to exceed $500,000 for fiscal year 1980, and not to exceed $500,000 in fiscal year 1981.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign

countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

PROHIBITED ACTS

SEC. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4

of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(C) sell or offer for sale in interstate or foreign commerce any such species; or

(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b) Species Held in Captivity or Controlled Environment.—*(1)* The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from the effective date of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on such effective date.

(2) (A) This section shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) Violation of Convention.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS.—(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or aminal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

EXCEPTIONS

SEC. 10. (a) PERMITS.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) Notice and Review.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) Permit and Exemption Policy.—The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) Alaska Natives.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaska resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)(1) As used in this subsection—

(A) The term 'pre-Act endangered species part' means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection nad pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) Certain Antique Articles.—(1) Sections 4(d) and 9(a) do not apply to any article (other than scrimshaw) which—

(A) was made before 1830;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subjection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1) (A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1) (A), (B), and (C) must be entered into the customs territory of the United States.

PENALTIES AND ENFORCEMENT

SEC. 11. (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, **[**or who knowingly commits an act in the course of a commercial activity which violates,**]** *and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates,* any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F), (a)(2) (A), (B), or (C), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Any person who knowingly violates, **[**or who knowingly commits an act in the course of a commercial activity which violates,**]** *and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates,* any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than **[**$1,000**]** *$500* for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a proponderance of the evidence that the defendant committed an act based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) CRIMINAL VIOLATIONS.—(1) Any person who [willfully commits an act which] *knowingly* violates any provision of this Act, or any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F); (a)(2) (A), (B), or (C) (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who [willfully commits an act which] *knowingly* violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing *a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing* the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be

liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution if the defendant committed the offense based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species."; and

(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included with in the judicial district of the District Court of the United States for the District of Hawaii.

(d) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(e) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other containers, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating

pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g) (2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State.

The district courts shall have jurisdiction, without regard to the amount incontroversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to **[**any party,**]** *the prevailing party,* whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION WITH OTHER LAWS.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.

CONFORMING AMENDMENTS

SEC. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,".

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

> "THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish and wildlife that are threatened with extinction."

and inserting in lieu thereof the following:

> "ENDANGERED SPECIES AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed

for the purpose of conserving endangered or threatened species of fish or wildlife or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat 653, 16 U.S.C. 460k–1), is amended to read as follows:

"The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91–135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc–6), is repealed.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

[(1) not to exceed $10,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,800,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

[(2) not to exceed $2,000,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal transitional period ending September 30, 1976, and not to exceed a total of $5,000,000 for the fiscal year ending September 30, 1977 and the fiscal year ending September 30, 1978, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.]

AUTHORZATION OF APPROPRIATIONS

SEC. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

EFFECTIVE DATE

SEC. 16. This Act shall take effect on the date of its enactment.

MARINE MAMMAL PROTECTION ACT OF 1972

SEC. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

ADDITIONAL VIEWS

The Merchant Marine and Fisheries Committee approved a bill which was designed primarily to assure its speedy passage on the House floor. It consists of a compromise which fully satisfies no single member of the committee, but which was approved because of the urgent need to authorize the continued enforcement of the Endangered Species Act during the coming year.

Representatives John Dingell and Edwin Forsythe deserve particular credit, we feel, for their efforts to maintain the basic integrity and strength of the original Endangered Species Act. If the committee had had more time to consider this bill, we are confident that the leadership of these two members would have produced a bill superior in many respects to the compromise product which did emerge.

The views which we express here are not meant to express opposition to, or condemnation of, the overall committee bill. They are, however, intended to suggest alternative solutions to some of the issues raised in the bill in case the compromise should be challenged on the floor, or if changes are considered in conference negotiations with the Senate.

The role of the Review Board

The committee bill requires that *both* the Review Board and the Endangered Species Committee make the following subjective policy judgments when deciding whether or not to recommend an exemption to the Endangered Species Act:

1. There are no feasible and prudent alternatives to the agency action;
2. The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and,
3. The action is of regional or national significance.

We believe that these judgments should be made solely by the Endangered Species Committee. The requirement that a Review Board also make these determinations is duplicative, it assumes that the members of these Board will be qualified to make informed, expert judgments of this type, and it allows a political judgment to be made by a group not subject to public scrutiny. The decision to condemn a form of life to extinction should not be made by three temporary employees of the Federal Government.

Since the exemption committee is granted the final word in any case, there is no need for the review board to cover the same ground. The major function of these boards should be to screen from committee consideration those exemption applications which are obviously without merit, or which concern projects about which the original consultation process has not been satisfactorily completed.

These goals can be met by limiting the three member Review Boards to examining the efforts at consultation between the Secretary and the relevant Federal agency, and to insuring that an adequate biological assessment has been conducted. The goals can also be met—in a more efficient manner—by giving the same functions to a single consultation examiner as suggested during committee deliberations by Congressman Dingell. This option would serve the desirable purposes of encouraging full consultation, screening the Endangered Species Committee from needless work, and streamlining the exemption mechanism in the committee bill.

The application for an exemption

The proposed new section 7(d) to the Endangered Species Act contained in section 3 of the committee bill gives the relevant Federal agency, the affected State Governor, *and* the particular permit or license applicant the ability to seek an exemption from the Endangered Species Act. We question the wisdom of allowing the permit or license applicant the right to request such an exemption.

Under the committee plan, a request for an exemption would set in motion a year long bureaucratic exercise involving six or seven Federal Government agencies, State and local officials, public hearings, exhaustive staff work, and the possibility of judicial review. Since there will exist a tremendous incentive for license applicants to seek an exemption, we think it reasonable to require that such a request have the support at least of the affected State Governor or the Federal agency involved.

As currently drafted, we fear that the exemption process—which was intended to handle only those very rare cases of true conflict under the act—will be flooded with cases of dubious merit. This will result in a squandering of time and resources in a manner not intended by the proponents of the compromise proposal.

Standards for an exemption

The committee bill provides that one of the criteria for an exemption is that the project is of "regional significance." This criteria is significantly less stringent than that which was proposed in the original Dingell-Forsythe proposal—that the project is "required in the national interest". In addition, it should be recognized that the Endangered Species Act was written to protect the national interest in preserving various species of plants and animals. One of the findings of the act specifically states that, "these (endangered) species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational and scientific value to the nation and its people."

Although we agree that an exemption procedure should be established for very special situations, we believe that any exemption criteria should be narrowly drawn and should allow exemptions to occur only when the national interest clearly requires that this should occur.

Membership of the Endangered Species Committee

One of the changes made at the time the subcommittee agreed to the compromise was the decision to eliminate the Administrator of the Environmental Protection Agency from the exemption committee. We believe that this was an error.

Clearly, the Administrator of the EPA is qualified to serve on the committee. We see no justification for excluding his scientific and environmental expertise from committee deliberations.

Specification of critical habitat

Critical habitat is defined as that air, land, or water area the loss of which would significantly decrease the likelihood of conserving a particular endangered or threatened species. Such habitat, if any, is specified at the time the Secretary of Interior proposes to list a new species as endangered or threatened, a matter which is the subject of public notification, meetings and an opportunity for a hearing under the current bill.

By definition, the designation of critical habitat requires an objective, scientific assessment on the part of the Secretary of Interior. The committee bill, unfortunately, ignores this fact by requiring the Secretary to consider economic impacts when designating critical habitat for invertebrate species, and by empowering him to exclude all or part of a biologically critical area on purely economic grounds.

In effect, then, the Secretary is given broad power to grant exemptions to the Endangered Species Act through a simple, unilateral administrative determination of his or her own. This is a process which stands in sharp contrast to the laboriously constructed exemption process, with its clear standards and procedural safeguards, which makes up the heart of the committee bill.

We want to emphasize that we do believe that economic considerations should be considered when weighing the desirability of granting an exemption to the Endangered Species Act. We simply believe that such consideration should be included in the basic exemption process, rather than singled out in a separate procedure where it does not logically belong.

As currently written, the critical habitat provision is a startling section which is wholly inconsistent with the rest of the legislation. It constitutes a loophole which could readily be abused by any Secretary of the Interior who is vulnerable to political pressure, or who is not sympathetic to the basic purposes of the Endangered Species Act.

A sunset provision

The exemption process established by this bill is unwieldy, at best, and virtually everyone agrees that it has potential problems. Committee hearings, moreover, produced considerable evidence that no exemption process may be needed at all.

Accordingly, we would prefer to see a sunset provision for the committee and review board exemption process included in the final bill. Our experience has shown time and time again how difficult it is to abolish a bureaucratic structure once it has been established. We do not intend, by making this suggestion, to prejudge the worth of the exemption procedures established by this bill. We simply point out that its successful functioning is by no means assured, and that a sunset provision would force the Congress to reexamine the work it has been forced to produce so hurriedly this year.

Gerry E. Studds.
Norman D'Amours.
Don Bonker.
Joel Pritchard.
David E. Bonior.
Barbara Mikulski.

95th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 95-1757

PROVIDING FOR THE CONSIDERATION OF H.R. 14104

October 11, 1978.—Referred to the House Calendar and ordered to be printed

Mr. Sisk, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 1423]

The Committee on Rules, having had under consideration House Resolution 1423, by a record vote of 7 to 5, report the same to the House with the recommendation that the resolution do pass.

[From the Congressional Record, Oct. 13, 1978]

HOUSE CONSIDERATION AND ADOPTION OF HOUSE RESOLUTION 1423 PROVIDING FOR CONSIDERATION OF H.R. 14104, ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1423 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1423

Resolved, That upon the adoption of this resolution it shall be in order to move, section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14104) to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, the bill shall read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from California (Mr. Sisk) is recognized for 1 hour.

Mr. SISK. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. Lott) pending which I yield myself such time as I may consume.

Mr. SISK. Mr. Speaker, House Resolution 1423 provides for the consideration of H.R. 14104 (the Endangered Species Act Amendments of 1978).

This is a simple open rule. It provides for 1 hour of general debate with the time equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries. The bill is to be read for amendment under the 5-minute rule and any germane amendment would be in order.

The rule provides for a waiver of points of order against the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act. This section of the Budget Act prohibits the consideration of any bill which authorizes the enactment of new budget authority for a fiscal year unless the bill has been reported on or before May 15 preceding the beginning of the fiscal year.

Sections 3 and 4 of H.R. 14104 authorizes the enactment of new budget authority for fiscal year 1979. Since the bill was not reported until September 25, 1978, it would be subject to a point of order under the Budget Act.

However, a predecessor bill, H.R. 10883, an authorization measure very similar to H.R. 14104, was reported on March 31, 1978, and prior to the Budget Act cutoff. In order to facilitate orderly consideration of the measure, the Committee on Rules voted to grant a waiver for H.R. 14104 rather than complicate the amendment process for the originally reported bill.

Mr. Speaker, H.R. 14104 provides authorizations to carry out the provisions of the Endangered Species Act through fiscal year 1981. The bill authorizes $25.5 million for fiscal year 1979; $28 million for fiscal year 1980 and $30.5 million for fiscal year 1981. The bill also provides a mechanism for the resolution of otherwise irreconcilable conflicts between the implementation of any federally permitted, licensed or funded activity and the protection of any endangered or threatened species and its critical habitat.

Mr. Speaker, while there has been controversy concerning the bill, I am not aware of any great opposition to the rule. I urge my colleagues to adopt House Resolution 1423 so that we may proceed to the consideration of H.R. 14104.

Mr. LOTT. Mr. Speaker, this is a 1-hour open rule permitting the consideration of the Endangered Species Act Amendments of 1978, H.R. 14104. The first reading of the bill is to be dispensed with, and section 402(a) of the Congressional Budget Act (the May 15 reporting deadline) is waived.

The purpose of H.R. 14104 is to provide $85.5 million in authorizations to enforce the Endangered Species Act for an additional 3 years. The bill establishes an Endangered Species Committee and requires the formation of review boards to examine the decisions of the Secretary of the Interior as to whether an agency's action would be hazardous to endangered species and their critical habitat area. Such a determination by the Secretary would prohibit the agency's action. Except in special cases, such as cases relating to international treaty obligations as determined by the Secretary of State or cases pertaining to disaster areas declared by the President, the Endangered Species Committee would make the final governmental decision by either approving or disapproving the agency's action. If an agency exemption is granted for pertinent reasons, any person may obtain judicial review of the decision.

Hardly any Member of Congress has escaped the effects of the Endangered Species Act. This well-intentioned law has served to delay and, in many instances, completely halt important public works projects with unimpeachable cost/benefit ratios. In my own congressional district, 40 birds (Mississippi sand hill cranes) have blocked for over 2 years the construction of an interchange on Interstate Highway 10, which is to serve the heaviest industrial area in my State.

Now, not all of us have snail darters, furbish louse-worts, or sand hill cranes in our districts; but we do have a vested interest in making the agency in charge of enforcing the provisions of the act conform to its original intent. There is an in-depth report by the General Accounting Office which is due to be published in March of 1979. It is my understanding that this report will reveal numerous problems with the manner in which the Fish and Wildlife Service is administering the act. The worst abuses, I am told, have occurred in the listing process whereby species of plants or animals have been listed as endangered without even a scintilla of adequate supporting evidence, while others that were listed at one time were withdrawn just as arbitrarily.

This proposed bill, although it makes many important and constructive changes in the Endangered Species Act, does not complete the task. We need more review by the authorizing committee, and we need the benefit of GAO's report before we extend the act for another 3 years. I am advised that there will be an amendment to shorten the three year authorization contained in H.R. 14104. I urge the members to support this amendment and, in doing so, to realize they are taking a significant step in the direction of improvement.

Mr. Speaker, I have no objection to the adoption of the rule at this time.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, am I right that this is really a rule which will help us to reenact the Endangered Species Act? Am I right in my recollection that the act expires in the absence of a new act?

Mr. LOTT. It would expire.

Mr. WHITTEN. Then what we are considering is whether to retain a program, and I have many questions to which I need answers, both from the Public Works Subcommittee and the Interior Subcommittee.

How any Supreme Court or any other court can say that the clear intention of the Congress was to bring about the actions that have been taken, I cannot see.

Speaking from memory, the act requires the Secretary of the Interior to make a survey of the country, and from that to determine that the species does not exist in other areas. That has not been done.

Not only is that true, but the act provides that these endangered species shall be moved in many areas or in many sections. That has not been done. The gentleman's district is one example.

Through a private conversation with the Secretary of the Interior, we had his cooperation in relieving the highway which was cut in two, Highway No. 10 of the Interstate System. We got that matter resolved.

Therefore, if anybody reads this—and I refer to the courts—he will find that the act as we have it now clearly shows that Congress never intended that this act be used to stop the development of our country, in my opinion.

Not only that, but I have in my pocket a statement by the head of the fisheries and wildlife activity in the Department of the Interior which says that they are sick and tired of this act being used to stop the progress and the development of this country.

Mr. Speaker, I just wanted to make it clear that this is not a rule to amend the act. It is to reinstate the act. There is every reason in the world to study this act very carefully.

Mr. Speaker, I had a conversation with my good friend, the chairman of this committee, when this bill was up before. At that time I had an understanding that this act would correct the things I am talking about, and I can cite chapter and verse as well as questions and answers from the hearings had at that time.

I see here that in spite of the good intentions, we have not had a great degree of success. This matter could lend itself, as I said, to more of the very problems we have now, except that it could be stretched out much longer because there are more and more people to whom one talks who are for reenacting this bill and not correcting it.

Mr. BUCHANAN. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Alabama.

Mr. BUCHANAN. Mr. Speaker, I agree with the remarks of my colleague from Mississippi.

However, I would like to point out to the Members of this body that the appropriation authorization does not repeal the basic act.

Mr. LOTT. That is correct.

Mr. BUCHANAN. The committee has made essential improvements in the bill which they are recommending to us, and some of us are going to do our dead-level best to perfect it even further on the floor of the House.

Right now the city which I represent has a half billion dollars of orderly, even model, development threatened by two small minnow-like fish because of the very things my colleague from Mississippi is talking about.

I think the best chance to do something about that kind of situation in my district and elsewhere is to pass this rule, to move forward with this bill, and help some of us perfect it as we go along.

Mr. ANDERSON of Illinois. Mr. Speaker, will the gentleman from Mississippi yield?

Mr. LOTT. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. I thank the gentleman for yielding. I certainly want to associate myself with the remarks just made by the distinguished gentleman from Alabama and urge the adoption of the rule so that we can proceed to consider important legislation.

I realize that many of the complaints that have been pressed by those like the gentleman from Mississippi and others are justified, and that there has been a certain inflexibility in the administration of this act in the past since its adoption, I believe, in 1973, in the celebrated case of the snail darter and the case of the furry bush lousewort, and some other matters of that kind that have led Members to think this is an action that should not be extended. But I think that they will find if we proceed to a discussion of the act that an exemption procedure has been wisely provided for in the amendment offered by the committee, the authorizing committee, and that the difficulties that have admittedly existed in the past with respect to the administration of this act can be cured by an amendment.

I, therefore, urge the adoption of the rule.

Mr. FLOWERS. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Alabama.

Mr. FLOWERS. I thank the gentleman for yielding.

I am, of course, encouraged by what I have heard from my distinguished friend, the gentleman from Illinois, and my dear colleague, the gentleman from Alabama, and the problem he enumerated I share because our districts are joined where this problem occurs.

By the clock on the wall and the clock on my arm it is 10 minutes to 1 on the day we are supposed to sine die adjourn; is that not correct? And we are going to have a full, free, and fair discussion of this act here today, tonight, and tomorrow? And we are going to conference and are going to pass it and are going to come up with something fair and equitable? And we are going to rely on the bureaucrats down there to do what we ask them to do here in the dark of the night? You people have got more faith in the system than I do, I will tell you that.

Mr. LOTT. I would like to respond to the gentleman because this has gone on long enough, and it is late. Neither the gentleman nor I set this on this schedule at this time and we should not question it.

But I would like to make one further point now, a point made by the gentleman from Alabama. The act does not expire; the authorization expires; and there is a very strong likelihood that we would have some additional projects that would be held up without this legislation being passed because of the public works contracts that are included in the act.

This is not the best solution, but it certainly is better than what we have got on the books right now, and I would hope that if the rule is accepted and this legislation is passed, it is for a reduced period of time.

Mr. Flowers. Will the gentleman yield further?

Mr. Lott. I will be glad to yield to the gentleman.

Mr. Flowers. I thank the gentleman.

Is the gentleman saying that we are going to get more in terms of reasonable decisionmaking by the bureaucrats by giving them an extension of time and more authorization for more bureaucrats and more money than by keeping them under the gun? That is what the gentleman is trying to do right now.

Mr. Lott. If we accept this rule and go to general debate, as late as it is, there are a number of amendments that have been agreed to here, and others that are going to be passed tonight, that will improve the situation.

Mr. Beard of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. Lott. I yield to the gentleman from Tennessee.

Mr. Beard of Tennessee. I thank the gentleman for yielding.

I do not believe there has been anyone on the floor who has fought this bill as I have as far as its being inflexible with the law. As the Supreme Court ruled in the Telleco Dam case, it is totally inflexible with the law. They threw the ball back into the court where it belongs, and that is this Congress.

I have to reemphasize the point: There is no way we are going to solve any of the problems if we do not come up with this new piece of legislation. If we let the present act remain on the books as it is, which has been termed totally inflexible by the Supreme Court, then all of these problems under litigation now will not be solved at all for at least a year. We have got a 500-staff GAO report that will be forthcoming in February, and I hear this report points out many critical problems.

The committee has agreed not to ask for a third authorization but to accept an 18-month extension so that next year they can start and continue every oversight hearing with the results of the GAO report and, I think, with some amendments they have accepted that I am going to be introducing.

With the mood of the committee, we have at least got our foot on first base. We are striking out if this act remains on the books as it is written today.

So if you and I want to see the bill changed very much, I plead with you, let us get on with it.

Mr. Lott. I have no further requests for time, and I yield back the remainder of my time.

Mr. Sisk. Mr. Speaker, I yield myself 2 minutes, and I yield to my colleague, the gentleman from Texas (Mr. Brooks).

Mr. Brooks. Mr. Speaker, I thank the gentleman very much.

One of the monsters we have not mentioned tonight, which has been the cause of a lot of difficulty in the Houston area in Texas, is called the Houston toad. I want you all to know they have not located it, but they know it is there. They are looking for it every night and they generally start hunting about 2 o'clock. I do not think they could see a toad by 2 o'clock in the morning if they had four of them staring at them.

I just do not know if we pass this rule, is there any indication from the author of the bill and the manager of the bill that we might just possibly accept a few amendments that would cause the economic impact of these monsters that might be sneaking out at 4 o'clock in the morning?

Mr. Murphy of New York. Mr. Speaker, I can assure the gentleman that will not be the case. I will be happy to join in the search.

Mr. Whitten. Mr. Speaker, if the gentleman will yield further, may I say there are many endangered species. I was going along with maintaining, preserving or protecting them but the evidence in this instance, and we can cite many instances where they have gone out and sought unknown species they never heard of to exist and sought to use them.

Let me quote one paragraph from the Director of the U.S. Fish and Wildlife Service:

> As you know, people who find the need to stop projects they cannot stop in some other way will use the Act and the species involved to achieve that end, which is a prostitution of the Act, and it denies the value of the creature involved, in my judgment.

I am reading from the answer given by Mr. Greenwalt, Director of the Fish and Wildlife Service, from the Congressional Record of June 16, 1978, page H5706.

We have let them go find something that they never knew existed, to stop the progress and the real environment of this country. I just wanted to bring it up to have a chance to consider these facts, if this bill is going to be before the Congress.

Mr. Sisk. Mr. Speaker, as I indicated early on, there are a number of horror stories in connection with endangered species. I recognize this.

I understand this may be a little controversial.

Unless there is a desire on the part of my colleague to yield further time, Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

[From the Congressional Record, Oct. 14, 1978]

House Consideration and Passage of H.R. 14104, With Amendments

Endangered Species Act Amendments of 1978

Mr. Bowen. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14104) to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. Bowen).

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 14104, with Mr. Sisk in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

The gentleman from Mississippi (Mr. Bowen) will be recognized for 30 minutes, and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. Bowen).

Mr. BOWEN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to comment briefly at this point that we have a statute which we have lived with since 1973. It was an attempt to balance environmental and developmental interest. I, frankly, am of the opinion that it has not been successful in that regard, and I think most of the Members of this House agree. For that reason, we have rewritten that legislation this year, and we have made a diligent effort to take into consideration more accurately the development needs of this Nation.

There are a number of things which this bill brings before the House which I think are substantial contributions in that direction. I guess it is often said that compromise is the soul of politics. And if that is true, certainly this bill has a great deal of soul, because it is very decidedly a compromise among a number of factors and forces. I would like to thank those representatives of what we might oversimplify by calling the environmental movement in the Nation, who have worked with us and tried to develop this bill, and, at the same time, those who represent the developmental interests of this country who have worked with Members and committee staff in order to devise a bill which does protect and preserve the endangered species of this Nation and at the same time provides an opportunity for human growth, development, and progress, which we feel is an absolutely vital consideration.

A number of questions which were raised last night during consideration of the rule were particularly directed in the area of what the bill does to insure that there can be economic growth and development in the country. I would like to direct my remarks in that direction. I know there will be others who will address other aspects of this legislation.

For the first time, we are going to have a bill which will provide actual notice to all local units of government. For the first time we are going to have a bill which will provide for publication of proposed listings. For the first time we are going to have mandatory public meetings and hearings. For the first time we are going to have current designation of critical habitat at the same time as the listings.

For the first time we are going to have proposed final regulations actually based on the best scientific data available—current, not old data, but current data. I might indicate that the gentleman from Texas (Mr. Brooks), who is not in the Chamber at this time, asked a question about the Houston toad. That is a good example of the mistakes and, frankly, what I must consider the ineptitude we have seen from time to time on the part of many of the officials of the Office of Endangered Species. They did designate as the habitat of the Houston toad a paved parking lot in downtown Houston. When it was brought to their attention, they then discovered that their maps and research data were somewhat out of date. So, this legislation obviously goes to correct that kind of problem.

We have, of course, for the first time the all-important exemption process. There is no exemption process under present statute law—none at all. I recall from the debate that took place before the Supreme Court on the Tellico Dam case that Mr. Justice Marshall, I believe it was, asked a question of one of the witnesses from the Department of the Interior as to whether or not, if he located a species in the basement of the building which was listed as endangered, and whose continued existence was jeopardized by the presence of the Supreme Court Building, would that mean that the building was going to have to be torn down. The answer was yes, the building would have to be torn down. Of course, there may be a number of people who would think that would be a good idea, but nevertheless that is an actual application of the way the present law could be administered. The courts made it clear that they can go no other way, as the law is now written; they cannot give us any relief.

Therefore, we have to revise the law. We have in this legislation a two-tier process which involves policy recommendations passed on findings on the part of a three-man review board. We have that decision reviewable by a six-man, cabinet-level committee, the ultimate political decision, as to whether an endangered species might be terminated, might be extinguished—a condition which we hope will not happen too frequently, but nonetheless we feel that process of exemption has to be established and it must be a fair and unbiased decisionmaking process.

We have a balanced six-man committee representing on the one hand the environmental interests, as we see it, the Interior Department, the National Oceanic and Atmospheric Administration, the Council on Environmental Quality; and on the other hand the Department of the Army, representing the Corps of Engineers, the Department of Agriculture, and the Governor of the State where the affected project is located.

We have for the first time an administrative process which is consistent with that which is established in the Federal Administrative Procedure Act from the final decision. We have judicial review of the Endangered Species Committee. We feel that we have established in this bill a number of safeguards, a number of methods of review which have been demanded by people throughout the country.

So far as the economic aspect of this bill is concerned, I think most people can take heart. We have very explicitly spelled out that economic matters may be considered in the exemption process. We have cited in our committee report the matters that are spelled out in OMB circular A–107 and Executive Order No. 11949. These are the required economic impact studies which have been ignored, unfortunately, by the Department of the Interior. We have spelled them out in the committee report in terms of those items which are to be considered in a balanced judgment between human needs and nonhuman needs. Some of them include the impact on consumers and business markets, local, State, and Federal Government; productivity of wage earners, businesses, government; the effect on competition; the effect on supplies and materials; products and services; the effect on employment; the effect on energy supply and demand.

We indicate particularly that national defense issues are important to the Nation. We also include esthetic, ecological, educational, historical, recreational, and scientific considerations and any other items which are deemed to be worthy to be reviewed and taken into the balance in determining whether or not the project shall proceed.

At the same time, Mr. Chairman, there are a number of amendments which will be offered here from the floor which may well improve the bill. There have been some agreements reached among the various parties who have been involved in the deliberations on this legislation, and I feel confident that many of the questions which were raised here last night during debate on the rule will be addressed by the amendments which have already been agreed to. These amendments, I think, will be offered shortly.

Supporters of this legislation include the following national and regional organizations:

National Association of Manufacturers.
Business Round Table.
National Environmental Development Association.
Association of General Contractors.
American Mining Congress.
American Association of Consulting Engineers.
National Forest Products Association.
American Public Power Association.
National Association of Realtors.
National Association of Home Builders.
American Road and Transportation Builders Association.
National Rural and Electric Cooperative Association.
American Waterways Operators.
National Housing Center.
National Limestone Institute.
Water Resources Council.
Tennessee River Valley Association.

Mr. Chairman, I would simply like to conclude by saying that I believe the committee has brought to us a balanced piece of legislation; not a perfect one. It is a compromise product. It may well be improved, and ought to be, by these amendments. It is a compromise product. It may well be improved and should be by these amendments.

I would like to conclude also by reminding the Members present that if we do nothing, we do not solve the problem. That question was raised as well last night: Why do we not just let this authorization expire? If we pass no legislation at all, we will have permanent legislation and two major barriers to progress with economic development. The law as it now stands requires consultation with the Department of the Interior before progress can take place of any kind of economic development project, whether it is a dam, a highway, a waterway, or anything, and there are a number of projects in the country right now which are frozen and are at a standstill because there is no money appropriated for the Department of the Interior to engage in the consultation process. In addition, no permits can be issued for import and export of products to be exempted from the Endangered Species Act.

That is a problem which we face if we pass no legislation. So it is not simply a matter of saying we will cure ourselves of this problem if we do nothing. The problem is with us. The law is permanent legislation. If we take no action we may end up paralyzing economic development throughout the country. For that reason we must act, and we hope we can act wisely. We feel we have brought to the floor a good bill. We commend it to the attention of the Members. I am quite confident that the House will act wisely in proceeding with this legislation.

I thank the Chairman.

Mr. Forsythe. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think in a way this is a historic occasion. At the outset I want to pay my high respects to the gentleman who was just in the well, the gentleman from Mississippi (Mr. Bowen), and to the gentleman on our side of the aisle, the gentleman from Tennessee (Mr. Beard) and to the members of the Fish and Wildlife Subcommittee and the full Merchant Marine and Fisheries Committee, and the chairmen of both of those committees, because the product which we have before the House today was certainly the result of a very tedious and difficult process.

The views that were very firmly held first resulted in four different bills being sponsored. We suddenly found ourselves in a position where instead of four different positions we had two coalitions. Then after a period of very heavy discussions and negotiations we bring today a bill, one bill, which does have I think very broad support in the environmental community and in the developer community.

We know that it is not perfect. We know that we may well come back in the next Congress and need to take further action as a result of the GAO report, which was referred to in the debate on the rule earlier today—very early today—but I do not think that should really create the problems for us with the committee bill today as has been expressed a number of times.

The worst of all worlds would be to not have an extension of the authorization for the Endangered Species Act because it would leave us really completely defenseless.

It would leave those who are interested in the projects completely defenseless and the act would really be administered by the courts.

This would be, I should think, a very serious situation and, in a way, would be really chaos.

There is already an application of a constituent of a Member that has been routinely approved, that is being withheld because the agency is saying "Well, we have no funds, therefore we can't act."

These kind of things in just a matter of a very few months will be really quite serious.

So I urge quick and full support for the committee bill.

There are a small number of amendments that the committee is willing to accept. While I really would, in a way, welcome trying to make many more accommodations I think, our posture now should be to try and move so that we can have this act signed to protect us in the interim. Then the commitment of the chairman of the committee I think is very firm, and I fully support it from the minority side, that we will take a very hard look in the Congress ahead so as to be able to find what necessary changes may be needed as a result of this further information which will not be officially available until about February of next year. And, realizing that even a 1-year extension, in truth, is only 2½ months from the improbable ability of Congress to act in its committees, about March 1, next year, to the cutoff of the authorizations of reported bills of May 15.

So, Mr. Chairman, I do think we have an agreement that I hope will be broadly supported, and that we will extend for 1½ years, or 18 months, which will give the Congress the opportunity to really review whatever other problems there are. We all know the horror stories that have been mentioned, and they are real.

I frankly believe that this bill, because of its real attention to the consultation process, which were well spelled out by my colleague, the gentleman from Mississippi (Mr. Bowen) are the real secret of the usefulness of this legislation.

It does have the exemption procedure. But I think most of the problems have been begun because of the lack of really responsive communications and hearings and opportunity for people to get at the process early on, which could have prevented many of the stories that we have all heard about and we all know about.

I want to prevent this kind of thing as much as anybody else, but I do think that it is essential that we do complete our function here today.

Mr. Beard of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. Chairman, it is my impression that the entire membership is aware that the Endangered Species Act is seriously flawed and in need of amendment. Although the inflexibility of this act is frequently characterized by reference to the problems surrounding the Tellico Dam and the snail darter, it seems that every day since that decision I have heard a different Member call to my attention the occurrence of similar problems in his own district. Although the Tellico Dam is not in my district, the Duck River Dam in my district faces a similar threat.

Mr. Chairman, I had intended to offer a complete substitute to this bill. However last week I received a briefing by the General Accounting Office which cast a different light on this subject.

Briefly stated, the GAO is conducting a self-initiating study of the effectiveness of this act. Although a final report will not be available until February, all their field work has been concluded.

Mr. Chairman, preliminary findings over 6 months ago revealed so many management deficiencies in the Fish and Wildlife Service that GAO was not able to brief the committee before oversight hearings were held. GAO proceeded to spend more than 500 staff days constructing an audit.

The major result of that work indicates that the procedures used in listing new endangered species are so ineffective and inefficient that they entirely destroy the integrity of this act. This finding is critical, given that all efforts toward drafting amendments to the act to date, including those in H.R. 14104, have centered on section 7, concerning "interagency cooperation." It now seems clear that neither H.R. 14104 nor the substitute bill which I had intended to introduce to amend this act would solve the problems this committee faces.

Regarding the current Fish and Wildlife Service listing procedure, GAO has found that no official priority exists on the listings. The ones which do exist are based entirely on the whim of service biologists.

Additionally, some species have been kept off the list apparently under political pressure. The selective approach to administering the law has allowed the New Malones Lake project to approach completion, even though a species of harvestman "daddy long-legs" was discovered behind the dam then under construction. It is interesting to note that the Fish and Wildlife Service compiled more evidence indicating that this should be listed as endangered, more so than any other species ever listed. Even so, this arthropod has yet to be listed. New Malones Lake is a $500 million project near Sacramento with an impressive 1.7 to 1 benefit-cost ratio.

GAO also has found that the Fish and Wildlife Service is causing unnecessary cost and disruption to construction projects because of the inefficient way in which the list of proposed new listings is managed.

Many species are proposed to be classified as "threatened" or "endangered" and remain in that status indefinitely. Once a species is proposed for the list, Federal agencies with potential conflicts are rightfully reluctant to begin new projects which may be adversely impacted, or to ask for full funding for projects already begun. In essence, the Fish and Wildlife Service proposes new listings, but fails to follow through. Status reports are never even written up on the species.

In contrast to this situation, Fish and Wildlife is actively considering listing species which are not even threatened or endangered. Again, because of failure to conduct scientific assessments, Fish and Wildlife is purchasing what they suspect to be "critical habitat" for species which have fully recovered from prior threats of extinction. In one such instance, Fish and Wildlife planned to purchase a pond in Hawaii for $6.4 million until the GAO stopped them as a result of their study.

Finally, GAO has found 5,200 "consultations" which Fish and Wildlife offered as proof that the act is working, cannot be documented. Most of these consultations, at least in many cases, were merely telephone calls. In many instances a dozen of them were placed to the same agency, regarding the same project.

Mr. Chairman, because I believe that Congress should have the opportunity to amend the act next year to reflect GAO's final report, I have asked for and received assurances from Chairman Murphy that a committee amendment will be offered or that they will accept my amendment to reauthorize this act only for 1½ years instead of 3 years, as called for by H.R. 14104.

I believe that with the adoption of the amendments which reflect GAO's concerns as expressed to me last week, together with the limited number of perfecting amendments, we will have a bill which should be satisfactory to all parties who have been vocal on these issues. I still believe that it would be wise to review the law next year and a year and a half from now, but any changes at that time probably should amount to no more than fine-tuning.

Mr. Chairman, this bill, as modified by my amendments and others, will constitute a long-overdue reform of the Endangered Species Act.

Mr. Duncan of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. Beard of Tennessee. I yield to the gentleman from Tennessee.

Mr. Duncan of Tennessee. Mr. Chairman, it is my understanding that the review process the gentleman would set up will take a year or a year and a half. Would the gentleman agree?

Mr. Beard of Tennessee. It possibly could take approximately 2 years from now for a project.

Mr. Duncan of Tennessee. Yes.

Mr. Beard of Tennessee. The new review process can be quicker than that.

Mr. Duncan of Tennessee. Would the gentleman say 2 years, or, at a very minimum, 1 year?

Mr. Beard of Tennessee. It could be a minimum of 1 year; the gentleman is correct.

Mr. Duncan of Tennessee. I thank the gentleman.

Mr. Beard of Tennessee. Mr. Chairman, I would like to say and I would like to emphasize what my colleague, the gentleman from Mississippi (Mr. Bowen), has pointed out. The reason I have somewhat changed my attitude, as it was pointed out last night, if the act remains unchanged as it has been for the past 3 years, we will not have any opportunity to review projects such as Tellico Dam or any other projects in other Members' districts.

At least, now we will have a format from which to try to conduct hearings and to try to exempt some of these projects. I do not say the bill is perfect, but I do feel that it is a much better bill than the one we have lived with for the past 3 years. I think the important thing that will have to be taken into consideration is with the completion of the GAO report consisting of 500 staff days of work this January the committee will have the opportunity to look at the GAO study and refine the bill even more next year. So I would urge that the Members of this House give us at least an opportunity to start trying to correct some of the problems that we have had to live with these past 3 years.

Mr. Bowen. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon (Mr. AuCoin).

Mr. AuCoin. I appreciate the gentleman's yielding.

Mr. Chairman, I ask for this time to engage in a colloquy with the gentleman from Mississippi, the manager of the bill.

The report states on page 23 that there should be an evaluation of the nature as well as the scope of the project in the determination of whether an action is nationally or regionally significant. This language is extremely important in many western communities where there is extensive Federal land ownership, especially national forests. The concern of many of these timber-dependent communities is that while an individual Federal timber sale may not cover a large geographical area, the elimination of that sale would have an effect on a much larger area. In effect, it would reduce the timber inventory, thus decreasing the allowable harvest from the area. This, in turn, would impact many more communities in the region and, thus, could be of regional significance.

I would ask the gentleman from Mississippi if the committee feels this type of situation should receive consideration in line with the intent of the language in the conference report.

Mr. Bowen. If the gentleman will yield, it would be my feeling that the gentleman is absolutely correct. Just as our good friends in the environmental movement have pointed out that a chain of life of vast importance may begin in one small spot with one small group of creatures, by the same token, I think a chain of economic development of vast importance to the country can be linked in the same manner. It is very clear in the committee report that the concept of regional impact does not mean multistate and, in fact, one of the examples used in the committee report is, I believe, the port of Sacramento, one limited area of economic development. I think we can identify a great many projects, whether they be waterways, whether they be dams, whether they be highways, whether they be forests, that can be identified as having an impact that it could clearly be considered regional. It is our firm intent that this legislation be interpreted in the direction of consideration of regional impact as meaning one narrow geographic range, and that by putting this language in, by putting the regional language in, we are trying to get away from the idea that we have got to demonstrate a broad national impact. "Regional" is to be interpreted clearly, in my opinion, as meaning a relatively limited area which could impact substantially upon lives and prosperity in the region affected.

Mr. AuCoin. I thank the gentleman. I know the committee is concerned that consideration also be given to the cumulative impact that multiwithdrawals of land from the timber base would have on national wood supply and price and economic dynamics that go along with that. I would ask the gentleman if he feels that the intent of the committee's language in the conference report on page 23 dealing with regional impact would cover that set of circumstances.

The Chairman. The time of the gentleman has expired.

Mr. Bowen. I yield 1 additional minute to the gentleman from Oregon.

I would agree that it does. It is my very clear and firm opinion that such withdrawals of timberland would in the aggregate have a regional impact.

Mr. AuCoin. I appreciate the gentleman's response.

Mr. Bowen. Mr. Chairman, at this point I yield 4 minutes to the distinguished gentleman from Michigan (Mr. Dingell), chairman of the Subcommittee on Fisheries and Wildlife.

Mr. Dingell. Mr. Chairman, I commend my friend and colleague, the gentleman from Mississippi (Mr. Bowen), my friend and colleague, the gentleman from New Jersey (Mr. Forsythe), and my friend and colleague, the gentleman from Tennessee (Mr. Beard), for their efforts in achieving this compromise, as well as the gentleman from California (Mr. Leggett), and the gentleman from New York (Mr. Murphy), chairman of the committee, for the very fine work they have done.

Mr. Chairman, when I authored the Endangered Species Act in 1973, my primary objective was protection of all species threatened or potentially threatened by man's development and overdevelopment.

Many of you were present for the passage and enactment of this law. Many of you agreed that the protection of our species must be held in the highest priority. That is what the act is all about.

Since the passage of the Endangered Species Act several developments have occurred causing the Act to come under fire. We have witnessed the Tellico Dam case. And, it was the Tellico case that helped to ignite the major controversy that we are engaged in today. The Fisheries and Wildlife Subcommittee held 8 days of intensive oversight hearings—and, out of these hearings came some rather constructive criticism of how the act is being administered. On the other hand, there were unfounded charges that the foundation of the statute is not good. There is no question that the act is a good act and for the most part it has worked.

Yet, much of the criticism directed against the Endangered Species Act is based on the belief that the act puts the interests of "obscure" species ahead of the interests of man. That belief is erroneous. What the act really puts foremost is the long-term interest of human welfare—and the necessity that mankind is entitled to a habitable environment. This necessitates having a diverse pool of genetic resources to tap for medical, scientific, economic and other purposes. What the act makes secondary to that goal is the realization of short-term, shortsighted, and single-purpose goals that can only be accomplished by destroying the very life forms that could someday be of enormous benefit to mankind.

In 1973, I felt that this ordering of priorities was right. Today, I continue to feel that it is right. Those of you who ridicule the numerous so-called obscure species whose names sound so foreign fail to realize that some of these littleknown species provide you and me with penicillin and a host of other crucial drugs; some of these species helped with the development of radar in World War II; other species provide the active ingredients for almost one-half of all medical prescriptions in the United States, and other substances which may someday unlock countless other mysteries of medicine and science.

I continue to feel the intentional obliteration of a unique life form is a matter of the utmost gravity and that we ought not to allow it—absent the most compelling and persuasive justification. The bill that we are considering today represents a qualification of the mandatory duties prescribed by the 1973 act. That qualification is carefully limited, however, so that the destruction of species will not be allowed except when there are no other alternatives to the accomplishment of some meritorious and necessary development action. The bill we consider here will also not allow the destruction of any species unless and until the consultation process has been given every opportunity to work.

In drafting this bill, we were mindful that the act's existing consultation process has been very successful in revolving potential conflicts that have arisen between endangered or threatened species and Federal projects. The Merchant Marine and Fisheries Committee did not intend to in any way limit the jurisdictional parameters of the 1973 act. Accordingly, we took great pains to insure that this consultation process continue to function in the effective manner that it has thus far functioned.

Thus, before a Federal action may be granted an exemption under this bill, it must first be established that the requirements of the consultation process have been carried out fully and in good faith. Further, this bill contains a new requirement designed to insure that the existence of endangered or threatened species in the area of a new Federal project will be identified at the earliest possible time—before construction of the project begins—and, thus, that consultation will have the greatest possible chance to succeed in identifying modifications or alternatives that will avoid adverse effects on endangered or threatened species.

If the consultation process has been exhausted to the fullest extent, this bill provides for a process whereby an exemption from section 7 of the act can be granted. But, it must be pointed out that in conjunction with granting such an exemption, there is a requirement that all reasonable mitigation and enhancement measures be established and that the agency being granted the exemption be required to include the costs of such mitigation and enhancement within the project costs. This procedure for exempted project actions is critical to this legislation. These provisions were included in this bill for the purpose of not only mitigating—or lessening—the adverse impact of an agency action on an endangered or threatened species, or its critical habitat, but in creating a process whereby the status of such species could be "enhanced" or improved. The concept of enhancement—as it is embodied in this legislation—is intended to be an asset to the Endangered Species Act. I included this provision in this compromise with the intent that "enhancement" be construed not merely as a restatement of "mitigation," but to go beyond the requirements of mitigation to actually improve the critical habitat and status of endangered or threatened species.

If we are to accept the responsibility of creating a mechanism that will possibly lead to the destruction of a species, we must also accept the responsibility of improving that which we have the potential to destroy.

We now face a major responsibility to pass this compromise, not because it is a total acceptable compromise, not because it answers all of the criticisms of the act, but because it is the most acceptable legislative statement of all who have been involving in shaping this bill.

Mr. Chairman, I would point out that the Endangered Species Act is not dead. The lapse of the authorization does not kill the substantive statute which remains fully alive and all the prohibitions will remain in full force and effect.

Mr. Chairman, the consequence of failure to adopt this legislation is to see to it that federally authorized and funded projects in the States may be affected or endangered because endangered species in its habitat cannot legally be found and cannot be proceeded on until the Fish and Wildlife Service has been consulted with. This could mean that almost any project inside the United States can be stopped until the statute is once again authorized. It is my hope that my colleagues will realize the hideous consequences to the development of this country stemming from the failure to pass this authorization legislation, so that consultation provisions in the statute may go forward.

It is with that additional observation that I urge my colleagues to consider favorably the early adoption of the legislation before us.

Mr. **Jeffords**. Mr. Chairman, I know that there has been a tremendous amount of controversy over this act, and there will be a number of Members who have already spoken who will speak again, believing that the act has to be substantially changed.

I have looked at the record, and I do not come to that conclusion. I believe that perhaps we are going too far. This is an act that has worked well, and to really try and redo it as we have may be going too far. But I am willing to accept the compromise brought about by the committee as I understand the dynamics of the situation.

At present we have a very rigid act, an act by which people use the courts to totally prevent development in many, many different situations. The decision of the Court was sound. We now have gone to the opposite extreme it seems to me. Not only do we not have the courts available except in instances of rare administrative law problems to preclude the extinction of a species, but we do not even have the legislative branch available to oversee the problems in the extinction of a species. We leave it to the boys downtown. Men that are not directly responsible to the people.

A very simple change here, which all the environmental groups believe is a reasonable one and which would only come about in the very rarest of circumstances, will solve this problem. I will offer an amendment to accomplish this. This amendment would provide that in the event that there will be an action taken by the boys downtown to extinguish a species, an action that will result in a species being destroyed from this earth, then, like many other things we do, we, the Congress, ought to have a review of such a decision. Then we can take a look at it, as we do under the Reorganization Act and a number of other things where we have much less important items to consider.

Then congressional committees can take a look that, and if the committee disapproves the action of the boys downtown, a new approach could be taken, or if we decide, the species preserved and such other action taken as is appropriate. That would be done in order to assure that the general purposes of the act are carried out.

Mr. Chairman, I will offer this amendment, and I hope for support of the amendment at that time.

Mr. **Forsythe**. Mr. Chairman, I yield 3 minutes to the gentleman from Alabama (Mr. Buchanan).

Mr. **Buchanan**. Mr. Chairman, there is a Chinese proverb about a small carp that swam up a raging river, braving the rapids, and with great effort and courage he finally made it to the headwaters of that stream. And then as a reward for his heroic effort he was turned into a dragon, which to the Chinese is a symbol of power and a good thing.

In my area, there are two small minnowlike fish, the Cahaba Shiner and the Goldline Darter, that are in the process of being turned into "dragons." These species could have died in its track, half-a-billion dollars of orderly private development, even model development, in my area, if they are listed as is now proposed.

Mr. Chairman, I am very pleased that the House now has an opportunity to address problems with the Endangered Species Act of 1973. It is a fact that these problems can rapidly be brought to bear on any unfortunate district in the country.

Last November, the U.S. Fish and Wildlife Service proposed two small minnowlike fish, the Cahaba Shiner and the Goldline Darter, as endangered species and designated a portion of the district which I have the honor to represent as critical habitat.

From the beginning, legitimate questions were raised by many persons about the accuracy and objectivity of this proposal. Although the 1973 act requires that any such proposal be based on the best scientific data available, the Service was unable to provide any substantive evidence that the species in question were, in fact, endangered. Specific questions from this Member about the scientific validity of this proposal were either ignored or responded to on the basis of the personal observations of the author of the proposal—a Service biologist who has a long history of environmental activism in my State.

The combined efforts of the entire Alabama congressional delegation were required to obtain a public hearing on the proposal. Finally, after private interests conducted a very expensive biological study which contradicted the assumptions and conclusions of the proposal, the Service, at my insistence, agreed to conduct an analysis of the population dynamics and habitat requirements of these fish. This study is still in progress, but I very much fear that upon its completion, the Service will move to finalize the listing of these species, and that as a consequence more than a half billion dollars' worth of orderly, even model, private development will be stopped dead in its tracks in the Birmingham area.

The bill before us today, H.R. 14104, is an attempt to address such problems. For that, I commend subcommittee chairman, Bob Leggett; ranking minority member, Ed Forsythe; our colleague, David Bowen; and the other Members who worked so hard to achieve this compromise bill. Many of the provisions of H.R. 14104 are thoughtful, well-reasoned changes which reflect the concerns which I and other Members have conveyed to the committee.

I will offer three amendments today. None of these amendments threatens the basic thrust or the integrity of the 1973 act, nor are they attempts to cut the bill before us. In many ways, they are technical, perfecting amendments.

As it now stands, the committee bill provides that the Secretary of the Interior is required to consider the economic impact of designating critical habitat for invertebrate animal species—beetles and other types of inserts, mollusks, jellyfish, and the like. The Secretary is not required, however, to consider the economic impact of designating critical habitat for fish, mammals, reptiles, amphibians, birds or plants.

I believe that the Congress should state specifically that the Secretary of the Interior should at least consider the economic impact of the designation of any area as critical habitat. I believe the persons living in such areas would support this idea. Therefore, at the appropriate time, I will offer an amendment to strike the words "invertebrate animal."

The second amendment is purely technical in nature and is designed to perfect language used in the bill. The committee bill contains a provision which requires any Federal agency receiving a section 7 exemption to conduct such "mitigation and enhancement" measures as are necesary and appropriate to minimize the adverse effects of the agency action on the species in question. I do not quarrel with the merits of this section, but question the wisdom of using the words "mitigation and enhancement" in the same phrase. I believe the word "mitigation" is sufficient to accomplish the purpose of the committee in this section of the bill. Therefore, I will move to strike the words "and enhancement" from the bill.

The third amendment will delete the provision, added in full committee markup, requiring the permit or license applicant, who under this bill can also apply for a section 7 exemption, to pay for mitigation measures assumed by the Federal agency granting the permit or license. As the bill contains no provision for the permit or license applicant to participate in the consultation process between the Federal agency and the Department of the Interior, I believe it is unreasonable to require the applicant to pay for the required mitigation measures.

I want to emphasize that these are not attempts to gut the Endangered Species Act. These amendments are designed to help improve the administration of this act, which in the past has left a great deal to be desired. I believe they are reasonable amendments and ask for the support of my colleagues from both sides of the aisle.

Mr. Bevill. Mr. Chairman, will the gentleman yield?

Mr. Buchanan. Yes; I will be glad to yield to the gentleman from Alabama.

Mr. Bevill. Mr. Chairman, I would like to commend the gentleman from Alabama (Mr. Buchanan) for his statement and endorse the statements he is making here regarding this matter.

We are delighted that this committee is now injecting some common horse sense into this legislation, and I know that the gentleman from Alabama has put in several very good amendments. Those amendments are pending here, and with reference to a couple of them, I want to ask the gentleman some questions.

On the invertebrate animal amendment the gentleman has introduced, am I correct that this amendment does not limit the Secretary's power to designate an area as a critical habitat?

Mr. Buchanan. Yes, that is correct. I do have pending three amendments, one of which would simply apply to all species. What the committee has already applied to invertebrate animal species. That is that the Secretary of the Interior is required to consider economic impact in the designation of a critical habitat. However, the amendment does not encroach upon the Secretary's authority to designate critical habitat for any species.

Mr. Bevill. What are the benefits of having the Secretary consider the economic impact of the critical habitat designation?

Mr. Buchanan. I believe that this will cause the Secretary to be more judicious in specifying such a critical habitat.

At present there are no ground rules. For example, in our case, a small fish is typically found some 30 miles, downstream, from our district. Yet, the Service has designated critical habitat to come up to the mouth of a sewage treatment plant in the Birmingham area 30 miles upstream. This is the kind of interpretation of the act or enforcement of the act that could go to every district in this country. I doubt if there is a single district in the United States that does not have one or more mutations of small minnow-like fish about which the same standards could apply, and they would be in as much trouble as my district.

Mr. Bevill. In other words, it could actually paralyze the construction of needed projects in every district in this country?

Mr. BUCHANAN. There is no question about it.

Mr. BEVILL. With respect to the gentleman's enhancement amendment, does this amendment change the meaning or even the tone of this section of the committee bill?

Mr. BUCHANAN. No, it does not. It seeks to implement the language defined in the committee report. I hope that the committee will give very careful attention to the very serious amendment which I will offer because, as I say, there is not a district in the country that will be immune from the kind of problem that we are facing unless the law is changed.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. I thank the gentleman for yielding.

Mr. Chairman, I would like to direct the attention of the gentleman and the committee to a couple of amendments which I will offer that address the problems which the gentleman raises and will attempt to redefine the term critical habitat and the definition of species.

Mr. FORSYTHE. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. Anderson).

Mr. ANDERSON of Illinois. Mr. Chairman, I take this time because I would like to indicate my appreciation for the very sincere and dedicated efforts that have been made, not only by the members of the committee of jurisdiction in this case, the Committee on Merchant Marine and Fisheries, but also other Members of the House, to bring out an acceptable bill that would indeed prevent the Endangered Species Act from expiring.

I would confess that, as I listened to the testimony when this matter was before my committee, the Committee on Rules, a few days ago, I did feel a genuine concern over the fact that a serious and a very lengthy study that I think was initiated by the GAO itself was apparently going to be bypassed in a rush to simply reauthorize for a 3-year period this legislation which became so controversial following the decision in the so-called Tellico Dam case.

But I think it is to the credit of the Members of this House, particularly those in charge of managing the bill, that they were willing to concede that, in a spirit of compromise, certain changes ought to be made, certain amendments ought to be accepted. And I have been informed that the amendments that are going to shortly be offered by my friend and distinguished colleague, the gentleman from Tennessee (Mr. Beard), will in fact be accepted by the managers of the bill, and that with those amendments and with the very good work that the committee itself did in providing for an exemption procedure, some of the inflexibility that had taken place in the past administration of this act is going to be corrected. I do not think any of us want to see rare and endangered species of flora and fauna become extinct in this great country. And yet, as has been said over and over again, I think both during the time when we were discussing the rule last night and during the general debate today, some reasonable sense of balance and compromise is required between the legitimate energy needs of this country, about which a great deal will probably be said in several hours as we consider the energy package, some balance has to be drawn between the needs that exist in the area of energy, in the area of the growth and development of our country, and our desire to preserve our very precious and important natural heritage.

So I am satisfied that a good job has been done by those in charge of this legislation, and I look forward to an opportunity of casting my vote in favor of this bill.

Mr. Bowen. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Wyoming (Mr. Roncalio).

Mr. Roncalio. Mr. Chairman, my colleagues, this chart will be presented again at the time of offering an amendment, but I thought it might be appropriate, because of the fact that the attendance in the House does change from hour to hour, to review these facts now and have them presented again at the time of the offering of the amendment.

I am deeply touched, since I have been waiting for so long for this, by the logic and good sense advanced by every person speaking for this bill. The first reaction in Wyoming when the decision of the district court in Lincoln, Nebr., came out last week to stop a project that has been 3 years in construction, because 4 months ago, 2 years and 7 months after construction began, after the Corps of Engineers permit, after injunctions were discharged, a judge saw fit to cover an area 300 miles upstream on the South Platte River from the area of a 60-mile flyway that had just been designated last May as a stopover—not as a critical habitat, but one of 13 stopovers for sand cranes and whoopers migrating from Canada to Texas and from Texas back to Canada.

The first reaction of my people is to kill this abominable bill, but this bill must not be killed, because in Wyoming awful incidents took place which prompted my good friend from Michigan to put this bill on the statute books. We unfortunately had human beings in my State who thought they had a right to destroy a species. I know whereof I speak when I come to the duty of saving eagles from men who take it upon themselves to destroy a nonhuman life form. This must be kept on the books, but it has to be administered with some degree of reason.

This is what I argue in the hope that an amendment I will offer later will protect the continuation of the Missouri Basin power project at Wheatland, Wyo., so that it might continue to be completed and remove the effects of a decision which ground to a halt the construction of the project 300 miles upstream last week.

My colleagues, this area I am alluding to is called Centennial Country by James Michener in his book. I hope all Members have a chance to read it without having to retire from Congress. "Centennial" proves that he who controls the water controls the land. You can have township after township in this grant, but it is to no avail to you if you do not control some water. The power generated by this station is used in an eight-State area, not just in Wyoming.

Senators in the other body from North Dakota, South Dakota, Montana, Wyoming, Nebraska—one from Nebraska—two from Colorado and one from Kansas, are adamant that something must be done to continue the work on this project. This project is $1,600 million of public obligations already purchased by nearly every bank and finance company in this area and in the Nation. Half of it is already completed, $800 million already spent. Two thousand one hundred men will be out of work because of this unfortunate decision which we can right, not by pushing aside the bill, but by adopting my amendment.

My amendment sets this plan out on water in the downstream area, and if it does in fact damage the existence of the whooping crane, then it can be compelled to change its cooling system in years to come. But, I must ask the Members to keep in mind that never in the history of this country has there been such, in my opinion, a horrendous outrage by counsel, a Mr. Houk.

He is the counsel for the National Wildlife Federation, and he walked out of this court room in Lincoln, Nebr., citing deficiencies in the environmental impact statement, deficiencies in the Endangered Species Act. When he came out he said to reporters of the Associated Press:

> The guts of this injunction is not in compliance with EIS. It is that we want more Wyoming water in Nebraska.

That is what he said. So, he is using this act and NEPA as a shield, and abuses both of them, and brought back those onerous water problems that have been settled since 1945.

Mr. Andrews of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. Roncalio. I yield to the gentleman from North Dakota.

Mr. Andrews of North Dakota. Mr. Chairman, I want to associate myself completely with the remarks of my good friend from Wyoming, and also point out that his delay is costing the consumers of our area millions of dollars each month. The consumers in this multi-State area will own this powerplant, because it is built by a cooperative. Actually, they have been planning for over a decade for this much-needed power to go on line. Everybody in the West knows the needs for water in our area and one of the priority uses is for the generation of the power needed to serve our farms and houses.

The Chairman. The time of the gentleman from Wyoming has expired.

Mr. Bowen. Mr. Chairman, I yield 2 additional minutes to the gentleman from Wyoming.

Mr. Andrews of North Dakota. This, as my colleague from Wyoming knows so well, is what we are trying to do here, to remedy this terribly unfortunate situation by adding an amendment that will allow construction to proceed without prejudice to subsequent termination of water use, and without doing anything to adversely affect endangered wildlife.

I will rise in support of my colleague's amendment when it is offered. I hope we will have a good discussion when it is offered, and it deserves to be supported overwhelmingly by this House, because it means so much to the average consumer of much-needed electrical power in such a large sector of our country.

Mr. Roncalio. I thank my colleague, the gentleman from North Dakota (Mr. Andrews), for those excellent remarks. We have gone over this legislation over and over again. We have checked it for germaneness and reasonableness with the environmental sources in the country. It is consistent with the provisions of the act. I hope the Members will give us their cooperation and not have a man leave after 10 years of work here to face over 2,000 people who will have no work, because of the determination that this is on line downstream.

That has no application whatsoever. The Fish and Wildlife people could have designated the flyways over the last 5½ years since the gentleman from Michigan (Mr. John Dingell) got them the right to do that, instead of waiting until this plant is 50 percent constructed and then have them go to court and get an injunction against the plant, and have the general counsel leaving the court and talking about difficulties between the States. The Supreme Court of the United States settled that old and painful dispute between Nebraska and Wyoming in the neighborhood of Centennial Country, along these two beautiful rivers. We do not want to have at this point difficulty over some misadministration of the Endangered Species Act.

Mr. FORSYTHE. Mr. Chairman, I yield 3 minutes to the gentleman from Colorado (Mr. Johnson).

Mr. JOHNSON of Colorado. Mr. Chairman, I want to follow up what the gentleman from Wyoming said, because it is not just the Grayrocks Dam which is endangered by the Endangered Species Act, but it is every project in the drainage area of the North and South Platte Rivers. That means every project from the hometown of Denver of the gentlewoman from Colorado, every project they propose, every water project or storage project in the towns along the rivers, everything they propose, every electrical generating plant is endangered by the provisions of this act.

The problem with the present bill—and I want to talk to the gentleman from Mississippi about this—is there is no provision limitation of area for the projects under study.

I spoke with a man from my hometown who is head of an environmental firm and they make environmental studies throughout the western area. They have just concluded a study for one generating plant near the Colorado-Wyoming border. It will take water out of the South Platte drainage system that ultimately runs into the North Platte and will have evidently the same problem with the whooping cranes that the GrayRocks Dam has. This man said:

> How can somebody who is preparing an environmental impact statement know how far he has to go to make his study? How can we tell our customers, the various States and the local municipalities and the various agencies, how can we tell them how far we have to go before our environmental impact statement is limited?

One of the major faults or weaknesses in this bill is that there is no limitation on size of the project area that has to be studied. Will the gentleman confirm there is no limitation on size of the project areas?

Mr. BOWEN. Mr. Chairman, if the gentleman realizes there is no way we can by statute define what the critical habitat will be. The present law provides no definition of what critical habitat is, and this law makes some step in that direction. It points out that the critical habitat for endangered species must include the range the loss of which would significantly decrease the likelihood of preserving such species. So we have given some fairly rigid guidelines.

I am in complete agreement with the gentleman, and I believe the majority of the House is in agreement on that, that the Office of Endangered Species has gone too far in just designating territory as far as the eyes can see and the mind can conceive. What we want that office to do is make a very careful analysis of what is actually needed for survival of this species.

Mr. JOHNSON of Colorado. I agree with the gentleman. The bill is an improvement over the present situation, but I am concerned about the discretion we are giving these individuals who manage this office and that such discretion is going to be exercised so as to result in the kind of Grayrocks decision which we cannot live with.

As was pointed out to the House, every project in northern Colorado, whether it is for storage of water, or electrical generation for communities, can be blocked under decisions similar to that of the Grayrocks decision.

Mr. DUNCAN of Oregon. The gentleman has put his finger on a very critical part of this bill, and I will offer an amendment at the appropriate time to define critical habitat to be that area essential to the preservation and conservation of the species, and I think that if we are concerned with critical habitat, that word "critical" implies essential to its survival.

Mr. JOHNSON of Colorado. Would the gentleman then say that that amendment would solve our problem so that we could build a project in northern Colorado?

Mr. DUNCAN of Oregon. I think it would come very close.

Mr. BOWEN. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. Hughes).

Mr. HUGHES. Mr. Chairman, I thank my colleague for yielding me this time.

Mr. Chairman, I rise in support of the Endangered Species Act Amendments of 1978.

At the outset, I must admit that I do so with some reservation. The Endangered Species Act, when it was enacted in 1973, represented a landmark measure in our efforts to slow the destruction of species threatened with extinction as a result of man's activities.

However, as the Supreme Court's decision in the Tellico Dam case indicates, the act did not set up any mechanism to resolve irreconcilable conflicts between a Federal project and an endangered species. It was implicit that the public officials charged with administering the act make some effort to balance the competing interests when those rare cases of irreconcilable conflicts occur. But they have not done so.

Accordingly the bill before the House would set up such a mechanism. The bill is the result of many days of hearings and markups in which the Merchant Marine Committee, on which I serve, heard from all sides of the controversy. The resulting bill, in my opinion, represents a reasonable, although not perfect, compromise among the competing interests on this issue.

There are two provisions in the bill that are particularly troublesome to me. One provision would require that any litigation over an endangered species matter should receive preference over all other matters then pending in the Federal court in which the case is being heard. Such a provision, in my view, is extremely unwise. The Federal courts in this country already are struggling under very heavy caseloads. Criminal cases and other important cases should not be pushed back every time that an endangered species case comes before the court; such action would be clearly unfair to the litigants in other cases.

The other provision of the bill that disturbs me is the provision that calls for the Secretary, in determining the critical habitat of any endangered or threatened invertebrate species, to consider the economic impact, and any other relevant impacts, of specifying any area as critical habitat. The Secretary then may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. I think this provision should specifically spell out that the Secretary should consider all relevant impacts of specifying an area as a critical habitat. These impacts should include the social, ecological, economic, scientific, archeological, and national security impacts, as well as any other local or national concerns.

It is my hope that the bill will be amended either on the floor of the House or in conference to reflect these two serious flaws.

In any event, I feel this bill, on the whole, provides a reasonable balance among the competing interests. I urge my colleagues to support it.

Mr. FORSYTHE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think this debate has been a very, very useful debate. I hope that we can now quickly move to consideration of amendments, but I think that again the message is we do want to keep an Endangered Species Act. We do want to try and improve it so that it does not create some of the very difficult situations that we are well aware of and with still a commitment that there may be more work to be done when, in early next year, the GAO report is available. And that that is the time, if we do need amendments further than we have agreed to here today.

Mr. Chairman, I yield back the balance of my time.

Mr. MURPHY of New York. Mr. Chairman, I rise in support of H.R. 14104. This bill was reported unanimously by the Committee on Merchant Marine and Fisheries after numerous markup sessions in both the subcommittee and the full committee. H.R. 14104 represents a balanced and reasonable solution to the endangered species issue. This bill introduces some needed flexibility into the Endangered Species Act without violating the integrity of the act in the process.

The Endangered Species Act was enacted in 1973 to establish a comprehensive program for the conservation of endangered and threatened species worldwide. The 1973 legislative action was a response to the alarming increase in the rate of extinction of plants and animals in the United States and around the world. The act stands today as the foremost statute for the protection of wildlife. I believe that the Endangered Species Act is basically sound. Nevertheless, we know that some problems have developed as a result of the act. This bill represents the committee's best attempt to resolve these problems in a responsible manner.

In developing this bill, the committee was guided by several important considerations. First, we believe that the need for the Endangered Species Act is as great today as it was in 1973. The Department of the Interior estimates that 20 species become extinct per decade in the United States, and an even greater number enter the endangered category. If this rate applies worldwide, an estimated 300 extinctions occur per decade. To a very real extent the Endangered Species Act is the only thing that stands between hundreds, if not thousands, of biologically and esthetically important species and extinction.

The process of extinction, of course, is a natural one. Throughout the history of the world, species of animals and plants have appeared, changed and disappeared. In recent time, however, the extinction process has changed dramatically. We have lost thousands of species over the last several hundred years, and the accelerated rate of extinction continues today. In fact, if anything, the rate of extinction will continue to increase as many lesser developed nations continue to clear their biologically rich tropical forests in a search for economic growth.

The real tragedy associated with massive species extinction is that we may never fully comprehend what we have lost. We know that many species can have significant biological and scientific value. Most of our drugs are produced from plants, for example. We also know that many species have a tremendous esthetic value which is difficult if not impossible to quantify. Who can quantify, for example, the value of the passenger pigeon, which once numbered in the millions and was a valuable food source, or the grizzly bear which is now reduced to remnant populations in the Continental United States. But for the vast majority of the species that have been driven to extinction over the last two centuries, we have absolutely no idea what scientific or esthetic values they contained. And, there is virtually no way for us to find out. They are simply gone.

The Endangered Species Act, in a small but significant way, attempts to slow the rate of extinction that we have witnessed over the last two centuries. The act does not attempt to end the process of extinction, however, or alter the normal evolutionary process. What it attempts to do is establish a program through which we can devote some resources for the conservation of endangered animals and plants. The experience with the act to date has taught us that most, if not all, conflicts between development activities and endangered species can be resolved through the consultation process provided in the act. In many cases, all that is required is a minor modification to the project to permit it to go forward in conformity with the Endangered Species Act. Just recently, for example, the U.S. Fish and Wildlife Service recommended a conservation program to the Corps of Engineers to permit the Corps' Dickey-Lincoln project in Maine to go forward despite the presence of the endangered furbish lousewort.

The second major consideration guiding the work of the committee was that although the Endangered Species Act is basically sound, there are some problems with it that need to be corrected. H.R. 14104 fully and adequately addresses these problems.

Section 7 of the Endangered Species Act requires all Federal agencies to insure that their actions do not jeopardize the continued existence of any endangered or threatened species or destroy or modify the critical habitat of any endangered or threatened species.

Section 7 provided the legal authority for the now famous suit against the Tellico Dam project in Tennessee. In June of this year, the U.S. Supreme Court affirmed the lower court's decision in the Tellico case holding that the dam could not be completed as planned because it would jeopardize the continued existence of the endangered snail darter. In reaching this conclusion, the Court indicated that the legislative history of the act indicated that Congress indeed intended to halt and reverse the trend toward species extinction—whatever the cost. The major problem with the act as I see it, is that as it is currently written, there is simply no way to balance the importance of conserving an endangered species against the critical need for many activities which may have an adverse impact on endangered species. This bill would resolve this problem by establishing a mechanism for exempting activities from the requirements of the act.

In brief, any application for exemption would be reviewed by a three-man Review Board. This Review Board would first determine whether the agency involved consulted with the Fish and Wildlife Service in a good-faith attempt to resolve the conflict. Having made a positive determination to that effect, the Review Board would then conduct a formal adjudicatory hearing on the issue of whether the action in question warranted an exemption from the Endangered Species Act.

The Review Board would make a recommendation to a cabinet level committee and the committee could grant an exemption from the Act if four out of the six members found that: First, there were no feasible and prudent alternatives to the agency action; second, the benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species, and third, the action is of regional or national significance.

I want to emphasize that the Review Board does not duplicate the work of the Endangered Species Committee. Rather, the Review Board acts as a hearing examiner for the committee. This process will insure that the committee acts on the basis of a complete record developed before appointees of the Secretary and the Governor.

A second major problem associated with the act as currently written involves the notable lack of public input into the listing and designation process. We found in the course of our hearings that, all too often, the listing of a species or the designation of critical habitat occurs in a regulatory vacuum. There has been little or no effect made to publicize the regulatory proposal in the affected area or give the people most directly impacted by the proposed regulation an opportunity to effectively comment on it. The designation of critical habitat amounts to nothing less than a form of restricted zoning from Washington, D.C. Once an area has been designated critical habitat many activities, which may have been conducted in the area, could be precluded by the terms of the Endangered Species Act.

This bill cures this defect by requiring actual notice of regulatory proposals to all general local governments. In addition, the bill requires that proposed designations of critical habitat be published in a local newspaper in the affected area. Finally, the bill would require informal public meetings on proposed critical habitat designations in the area of the habitat and hearings in the State.

All of these provisions put together will help to insure that the Department of the Interior is not blindly listing species and designating critical habitat without consulting the views of the people of the affected area. In addition, these provisions will serve to alert the Fish and Wildlife Service about possible conflicts between the listed species and human activities. Certainly it is in everybody's interest for conflicts between species and development activities to be discovered and resolved at the earliest possible opportunity.

The bill includes a number of other provisions which I will not attempt to summarize at this time. All of them, however, address issues that were raised during the lengthy set of oversight hearings conducted by the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

I believe that the provisions of this bill are exceedingly comprehensive. They were only adopted after a rigorous markup process and after lengthy hearings. Nevertheless, some Members are going to say that we are acting too fast—that we should slow down and wait for the anticipated GAO report on the operation of the act.

Well, we do not need to wait. We have enough information right now. More importantly, the GAO report is not going to say anything that we do not already know. The GAO has already briefed members of the committee on the results of their study. They have indicated to us that H.R. 14104 addresses nearly all of their major concerns. The GAO is concerned about the administration of the Endangered Species Office, but any administrative deficiencies are more appropriately handled by good oversight, and not through legislation.

I believe that the committee has reported a good, balanced bill. I urge the House to adopt it.

Mr. Leggett. Mr. Chairman, I support H.R. 14104. This bill is a compromise—there is no secret about that. I doubt that any one Member that worked on this measure is totally satisfied with it. Nevertheless, H.R. 14104 introduces some needed flexibility into the Endangered Species Act where none currently exists.

We all agree that the Endangered Species program is worthwhile and ought to be continued. We have discovered, as a result of the Tellico decision, that one provision in the act is significantly devoid of the flexibility, however, and needs to be amended.

Section 7 of the Endangered Species Act prohibits any action authorized, funded or carried out by a Federal agency from adversely modifying the critical habitat of an endangered or threatened species. As the chairman of the committee has explained, the U.S. Supreme Court interpreted this provision to require Federal agencies to avoid adverse impacts on endangered species—no matter what the cost. The Supreme Court decision may be good law, but it is very bad public policy.

We know that there are few, if any, absolutes in this world. We should be concerned about the conservation of endangered species, but I, for one, am not prepared to say that we should be concerned about them above all else. One of the real anomalies of our wildlife statutes is that they permit entire runs of nonendangered salmon to be destroyed by development activities—and this has happened up and down the west coast—but they prohibit the taking of a single endangered snail darter. Clearly, we need to offer more protection for the salmon, and a little less protection for the snail darter.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment, which I chair, developed the bill before the House today only after conducting an extensive set of oversight hearings on the Endangered Species Act. These hearings covered a period of 8 days and included testimony from 70 witnesses. We literally heard from everyone who wanted to testify on this subject.

In addition to the evidence developed during the oversight hearings, the committee has been briefed by the General Accounting Office which is conducting its own study of the administration of the Endangered Species Act.

In general, I believe that the evidence presented to the committee indicates that the Endangered Species Act has worked fairly well. Section 7 of the act has been the subject of litigation in four instances. Two projects, Tellico Dam and the Grayrocks Reservoir in Wyoming, have been enjoined as a result of section 7. One other project, an interchange on Interstate 10 in Mississippi, was modified as a result of section 7. In the fourth case the court decided that the project would not have an adverse impact on the species involved.

Thus, at this juncture only two projects have been enjoined as a result of the Endangered Species Act. And in fact, the court opinion on the Grayrocks Reservoir suggests that the refusal by the Rural Electrification Administration to consult with the Fish and Wildlife Service was largely responsible for the injunction in that instance.

Despite the small number of projects affected by the Endangered Species Act to date, the committee determined that there is a real potential for future conflicts under the act as currently written. Although the act had been in effect since 1974, the section 7 regulations were not promulgated until January of this year. Thus, all Federal agencies were not put on notice of the full meaning of section 7 until the Tellico decision in June of this year.

More importantly, only a handful of critical habitats for endangered species have been designated to date. As of August 1978, critical habitats had been designated for 32 separate species. An additional 56 critical habitats have been formally proposed for designation. In addition, there are some 140 domestic animal and plant species currently listed as either endangered or threatened for which no critical habitat has yet been proposed. Additionally, there are 156 animals and 1,850 plants formally proposed for listing as endangered or threatened. Many of these will ultimately have critical habitat designated for them.

The point of all of these figures is that there is some significant likelihood for conflicts under the act. It occurred to the committee that there is a need to develop a mechanism to resolve these conflicts and potential conflicts short of wholesale revision of the Endangered Species Act—an option that I am sure very few Members would endorse.

The chairman has already described the exemption process in H.R. 14104 at some length. I will not attempt to recover that ground here. I would like to focus on a couple of significant portions of that exemption process. First, in contrast to the Senate bill, H.R. 14104 would permit the Governor of the affected States, as well as Federal permit and license applicants to apply to the Endangered Species Committee for an exemption. We recognized that section 7 applies to more than just Federal agency actions. It applies to actions "authorized, funded or carried out" by Federal agencies. In many cases, of course, the relevant Federal agency may have little or no interest in the project at issue. The Corps of Engineers, for example, grants thousands of permits each year under section 404 of the Federal Water Pollution Control Act. The corps would apply for an exemption under our bill, but would have little if any interest in doing so. Likewise, the Secretary of Agriculture participates in numerous timber purchasing contracts, but the Secretary has no significant economic interest in these contracts. H.R. 14104 merely gives the timber purchaser, in addition to the Secretary, an opportunity to receive an exemption from the Endangered Species Act.

I want to emphasize that H.R. 14104 only gives the Federal agency, the Governor and the permit and license applicants an opportunity to receive an exemption from the Endangered Species Act. They can apply for an exemption, but they are not guaranteed to receive one. In order to receive an exemption under this bill, the applicant must satisfy a set of stringent criteria.

Most importantly the applicant has to convince the Review Board that they consulted with the Secretary in a good faith attempt to resolve the conflict. Consultation is the key to this process as it is to the entire act. We believe that many endangered species problems can be solved through consultation. An exemption procedure must insure that the Federal agency made a reasonable effort to resolve the issue at the consultation stage without resorting to the full exemption procedure.

If the Review Board determines that consultation was carried out in good faith, they can proceed to consider the merits of any exemption. To a large extent, the Review Board is acting as the hearing examiner for the Endangered Species Committee. We recognized that it will be exceedingly difficult to get the cabinet level committee members to devote a substantial amount of personal time to the collection of evidence on the merits of any exemption. Under the terms of H.R. 14104 the Review Board will do most of the work for them. The Review Board will conduct the formal adjudicatory hearing, evaluate the evidence presented during the hearing, and make a recommendation to the Endangered Species Committee. The committee will be expected to make its decision on the basis of the Board's recommendation as well as the evidence presented during the formal hearing.

At first blush, the procedure proposed in H.R. 14104 appears to be very long and complex. In fact, every effort has been made to streamline this process. We recognized that inordinate delays in the construction of projects can be devastating to them.

Thus, every stage of the procedure in H.R. 14104 has a time limitation associated with it. The limitations will insure the expeditious resolution of any exemptions to communities who will be impacted by a critical habitat a limitation on the period of consultation. This bill requires the Secretary to issue his biological opinion within 90 days or within a time that is mutually agreeable to the Secretary and the Federal agency involved. Second, once an application for an exemption is presented to the Review Board, the Board would have only 60 days to decide whether the agency satisfied the consultation requirements of the act. If the agency had consulted properly, the Review Board would proceed to conduct a formal hearing and make a recommendation to the Endangered Species Committee. This recommendation would have to be issued within 180 days of the initiation of the hearing. Finally, the committee would have 90 days to decide whether or not to grant the exemption.

The exemption procedure is an important part of this legislation, but it is far from the only part. The bill includes a number of other provisions which will serve to improve the administration of the act.

Most significantly, the bill includes a number of provisions which are intended to improve the notice procedures in the act and insure that those communities to be impacted by a critical habitat proposal will have a chance to comment effectively on it. Unfortunately, the current notice and hearing procedures in the act have not sufficiently accommodated the interests of individuals outside of Washington, D.C.

Currently, proposals to list species or designate critical habitat are published in the Federal Register alone. Not surprisingly, many listings and designations are proposed and finalized without anyone knowing it. H.R. 14104 corrects this deficiency by requiring actual notice to all units of local government. It also requires proposals to designate critical habitat to be published in newspapers of general circulation in the vicinity of the proposed habitat. Finally, the bill mandates hearings on critical habitat proposals in the vicinity of the proposed habitat.

We believe that all of these requirements will enhance rather than detract from the endangered species program. All too often, those people that know the most about a species, or are more likely to perform an activity that is detrimental to the species, are the last ones to be consulted by the Washington bureaucracy. Certainly it is in everybody's interest for conflicts between species and development activities to be discovered and resolved at the earliest opportunity. These provisions will insure that this is the case.

The Endangered Species Act has been criticized because it allows for no consideration of the economic impact of listing a species or designating critical habitat. Although H.R. 14104 retains the act's stringent mandate, it does introduce a consideration of economic impacts in several respects. First, the consideration of economics is central to the exemption process. The Endangered Species Committee must determine whether the benefits of the agency action—including economic benefits—outweigh the benefits of alternatives which would conserve the species. Second, the bill includes a provision which requires the Secretary to evaluate the economic impact of designating critical habitat for invertebrate species. This provision authorizes the Secretary to alter the designation of critical habitat for these species if he determines that the benefits associated with excluding the habitat outweighs the benefits associated with the designation.

The ultimate goal of the Endangered Species Act is the conservation of the ecosystem on which all species, whether endangered or not, depend for survival. For this reason the Endangered Species Act protects all endangered and threatened members of the animal kingdom, not merely the so-called higher forms of life. Nevertheless, we recognized that the larger number of invertebrate species could ultimately present serious conflicts with many Federal activities. This provision will continue full protection for all listed species, but will give the Secretary some much needed discretion in the designation of critical habitat.

H.R. 14104 includes a number of other provisions which will serve to improve the administration of the Endangered Species Act. The bill requires the Secretary to review the list every 5 years to determine if any species should be removed from the list. It also requires the Secretary to act on any regulatory proposal within 2 years. These two provisions are intended to make sure that the endangered species list is kept up to date and that the decision whether or not to list a species is made within a reasonable period of time.

Mr. **Lehman**. Mr. Chairman, the Endangered Species Act, enacted in 1973 has worked well, and there is no real need to amend this legislation. The Merchant Marine and Fisheries Committee, in an effort to address the criticism that this act is inflexible, has nevertheless reported out a compromise bill, H.R. 14104. As with any compromise legislation, this bill contains both positive and negative features, but I support its passage.

I am especially concerned about allowing the Secretary of the Interior to consider the economic impact of declaring a critical habitat for invertebrates, a procedure not required when declaring critical habitats for vertebrates. On the positive side, however, this bill includes requirements for recovery plans for all listed species, improved notice procedures for proposed listings and habitat designations and biological assessments before action begins on projects where endangered species are present.

All plants and animals have real, and in some cases still undiscovered, value for us. They are a source of food, and have already proven their value in medical research. They have set alarms for us, alerting us to the dangers of DDT. Many common weeds are already being tested as possible energy sources. Since all species are interdependent, it is impossible to determine the impact that the destruction of one could have on the balance of nature and thus our society.

The Endangered Species Act has been the backbone of our country's struggle to protect threatened or endangered wildlife from extinction. I therefore urge that the compromise committee version of H.R. 14104 be passed by the House, without any further weakening amendments.

Mr. **Bowen**. Mr. Chairman, I believe I have no further requests for time on this side.

I would simply ask the committee to proceed with the business at hand which is considering some very significant amendments which I think can improve this bill.

I want to remind the members of the committee that we have an agreement that at any point at which a recorded vote would occur that the committee will have to rise. So it is our hope that we can dispose of a few noncontroversial amendments so that we may conduct as much business of the committee as we can during this period of the day.

Mr. Chairman, I yield back the balance of my time.

The **Chairman**. The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

Sec. 2. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by adding at the end of subsection (a)(1) the following new sentence: "At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat. The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to enactment of the Endangered Species Act Amendments of 1978.";

(2) by adding at the end of subsection (b) the following new paragraph: "(4) In determining the critical habitat of any endangered or threatened invertebrate animal species, the Secretary shall consider the economic impact,

and any other relevant impacts, or specifying any particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat."

(3) by amending subsection (c)(1) by striking out "and shall", and by inserting immediately before the period the following: ", and specify any critical habitat within such range",

(4) by amending subsection (f)—

(A) by amending paragraph (2)(A) to read as follows:

"(2)(A) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

"(i) shall publish notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation—

"(I) in the Federal Register; and

"(II) if the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat; and

"(ii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat;

"(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation, if request therefor is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

"(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each such State.

If a public meeting or hearing is held on any regulation, the regulation may not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. Any accidental failure to provide actual notice under clause (ii) to all general local governments required to be given notice shall not invalidate the proposed regulation."; and

(B) by adding at the end thereof the following new paragraph:

"(4) Any proposed or final regulation which specifies any critical habitat of any endangered species or threatened species shall be based on the best scientific data available, and the publication in the Federal Register of any such regulation shall, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be impacted by such designation."; and

(5) by adding at the end thereof the following new subsection:

"(g) Recovery Plans.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the conservation or survival of endangered species and threatened species listed pusuant to this section. The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.".

Sec. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

“INTERAGENCY COOPERATION

“Sec. 7. (a) Review by Secretary.—The Secretary shall review all other programs administered by him and utilize such programs in furtherance of the purposes of this Act.

“(b) Agency Conservative Programs.—Each Federal agency shall, after consultation with and with the assistance of the Secretary, utilize its authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4.

“(c) Agency Action.—(1) Each Federal agency shall insure that any action authorized, funded, or carried out by the agency (hereafter in this section referred to as an ‘agency action’) does not result in species or habitat degradation unless an exemption has been granted by the Endangered Species Committee under subsection (f) with respect to such agency action.

“(2) If any Federal agency—

“(A) considers that any agency action over which it has jurisdiction may result in species or habitat degradation; or

“(B) is notified by the Secretary that the Secretary considers that such agency action may have such a result;

the Federal agency and the Secretary shall undertake immediate consultation with respect to the matter, including, but not limited to, consultation to determine if reasonable and prudent alternatives are available. Consultation under this paragraph with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing whether the agency action may result in species or habitat degradation and whether there are reasonable and prudent alternatives which, would avoid species or habitat degradation which can be taken by the Federal agency in implementing the agency action.

“(3) To facilitate compliance with the requirements of paragraph (2)(A), each Federal agency shall, with respect to any action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any listed species may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

“(4) After initiation of consultation required under paragraph (2), the Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid species of habitat degradation.

“(c) Agency Action.—(1) Each Federal agency shall insure that any action authorized, funded, or carried out by the agency (hereinafter in this section referred to as an ‘agency action’) does not result in species or habitat degradation unless an exemption has been granted by the Endangered Species Committee under subsection (f) with respect to such agency action.

“(2) If any Federal agency—

“(A) considers that any agency action over which it has jurisdiction may result in species or habitat degradation; or

“(B) is notified by the Secretary that the Secretary considers that such agency action may have such a result;

the Federal agency and the Secretary shall undertake immediate consultation with respect to the matter, including, but not limited to, consultation to determine if reasonable and prudent alternatives are available. Consultation under this paragraph with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing whether the agency action may result in species or habitat degradation and whether there are reasonable and prudent alternatives which would avoid species or habitat degradation which can be taken by the Federal agency in implementing the agency action.

"(3) To facilitate compliance with the requirements of paragraph (2)(A), each Federal agency shall, with respect to any action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any listed species may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

"(4) After initiation of consultation required under paragraph (2), the Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid species or habitat degradation.

"(d) APPLICATION FOR EXEMPTION AND CONSIDERATION BY REVIEW BOARD.—(1) A Federal agency, the Governor of the State in which the Federal agency action will occur, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if after consultation under subsection (c)(2) the Secretary's opinion indicates that the agency may result in species or habitat degradation. An application for an exemption shall be considered initially by a review board in the manner provided in this subsection, and shall be considered by the Endangered Species Committee for a final determination under subsection (f) after a recommendation is made by the review board.

"(2)(A) Any Federal agency, Governor, or permit or license applicant seeking an exemption under this subsection shall submit a written application to the Secretary, in a form prescribed by the Secretary, not later than 90 days after the completion of the consultation process. Such application shall set forth the reasons why the Federal agency, Governor, or permit or license applicant considers that the agency action meets the requirements for an exemption under this subsection.

"(B) Upon receipt of the application for exemption referred to in paragraph (1), the Secretary shall promptly notify the Governor or Governors of the affected State, and request that they appoint a member of the review board to be established under paragraph (3) in accordance with the provisions of such paragraph.

"(3)(A) A review board consisting of three members shall be established for purposes of considering an application for exemption and making recommendations to the Endangered Species Committee under this subsection as follows:

"(i) The Sevreary and the Governor of the affected State shall each appoint one individual to the board not later than 15 days after a request is submitted pursuant to paragraph (2). If more than one State is affected by the agency action, the Governors of such States shall appoint one individual collectively.

"(ii) The two individuals appointed under clause (i) shall appoint one individual not later than 15 days after both of them have been appointed.

"(B) Members of a review board who are full-time officers or employers of the United States shall receive no additional pay on account of their service on the board. All other members shall be entitled to receive an amount not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day during which they are engaged in the actual performance of duties vested in the board. While away from their homes or regular places of business in the performance of services for a review board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(4) The Secretary shall submit the application to the review board immediately after its appointment under paragraph (3), and the Secretary shall submit to the review board, in writing his views and recommendations with respect to the application within 60 days after receiving a copy of any application under paragraph (2).

"(5) It shall be the duty of a review board appointed under paragraph (3) to make a full review of the consultation carried out under subsection (c)(2), and within 60 days after its appointment or within such longer time as is mutually agreed upon between the agency and the Secretary, to make a determination, by a majority vote, whether such agency has—

"(A) carried out its consultation responsibilities in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to its proposed action which will avoid species or habitat degradation;

"(B) conducted and biological assessment required of it by subsection (c)(3); and

"(C) refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (c)(4).

Any determination by the review board that the agency has not met the requirements of subparagraph (A), (B), or (C) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(6) If the review board makes positive determinations under subparagraphs (A), (B), and (C) of paragraph (5), it shall proceed to consider the application for exemption. In considering any application for an exemption, a review board shall take into account the reasons for an exemption set forth in the application of the Federal agency, Governor, or permit or license applicant, the views of the Secretary submitted under paragraph (4), and the views of other Federal and State agencies and appropriate persons. The review board shall recommend an exemption from the requirements of subsection (c)(1) for any agency action if, by a majority vote, it determines on the record after an opportunity for a hearing held in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5 of the United States Code, that—

"(A) there are no feasible and prudent alternatives to the agency action;

"(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(C) the action is of national or regional significance.

The review board shall recommend to the Endangered Species Committee whether or not to grant an exemption within 180 days after the hearing described in this paragraph is initiated, or within such other time as is mutually agreed upon by the applicant and a majority of the review board. If the review board recommends an exemption it shall include with its recommendation any reasonable mitigation and enhancement measures which should be considered by the Endangered Species Committee under subsection (f). The review board shall transmit the record of its proceedings and its recommendation to the Committee.

"(7) In carrying out its duties under this subsection, a review board may, and any member of a review board if so authorized by the review board, may—

"(A) sit and act at such times and places, take such testimony, and receive such evidence, as the review board deems advisable;

"(B) subject to the Privacy Act of 1974, request of any Federal agency information necessary to enable it to carry out such duties, and upon such request the head of such Federal agency shall furnish such information to the review board; and

"(C) use the United States mails in the same manner and upon the same conditions as Federal agencies.

"(8) Upon request of a review board, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the review board to assist it in carrying out its duties under this section.

"(9) The Administrator of the General Services shall provide to a review board on a reimbursable basis, such administrative support services as the review board may request.

"(10) All meetings and records of review boards shall be open to the public.

"(e) ESTABLISHMENT OF COMMITTEE.—(1) There is established a Committee to be known as the Endangered Species Committee (hereinafter in the section referred to as the 'Committee').

"(2) The Committee shall be composed of six members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Secretary of the Interior.

"(D) The Administrator of the National Oceanic and Atmospheric Administration.

"(E) The Chairman of the Council on Environmental Quality.

"(F) The Governor of the States in which the Federal agency action for which an exemption is sought under this section will occur (or in the case of any agency action which will occur in more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee).

"(3) The Chairman of the Council on Environmental Quality shall be the Chairman of the Committee.

"(4) Members of the Committee shall receive no additional pay on account of their service on the Committee, except that while away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5) The Committee shall meet at the call of the Chairman or four of its members.

"(6) All meetings and records of the Committee shall be open to the public.

"(7) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony and receive such evidence as the Committee deems desirable.

"(f) EXEMPTION.—The Committee shall make a final determination whether or not to grant an exemption within 90 days of receiving the recommendation of the review board under subsection (d)(6). The Committee shall grant an exemption from the requirements of subsection (c)(1) for an agency action if, by a vote of not less than four of its members voting in person—

"(1) it determines on the record, based on the recommendation and the record of the review board and on such other testimony or evidence as it may receive, that—

"(A) there are no feasible and prudent alternatives to the agency action;

"(B) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(C) the action is of regional or national significance; and

"(2) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned. Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(g) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of the State shall, at the time of such certification, publish a copy thereof in the Federal Register.

"(h) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (f) that an exemption should be granted with respect to any agency action, the

Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (f) which shall be carried out and paid for by the Federal agency in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

"(2) The Federal agency receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any Federal agency may request the Secretary to carry out such mitigation measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the agency receiving the exemption. No later than one year after the granting of an exemption, the agency to which the exemption was granted shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the agency preparing such reports.

"(i) Judicial Review.—Any person as defined by section 3(8) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (f) in the district court of the United States for any district wherein the agency action concerned will be, or is being, carried out by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

"(j) Exemptions in Presidentially Declared Disaster Areas.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsection (f) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

"(k) Special Provisions.—(1) An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

"(2) Notwithstanding sections 4(d) and 9(a), or any regulation issued to carry out such sections, no act or activity engaged in which is necessary to carry out any agency action for which an exemption is granted under this section shall be considered to be a taking of any endangered species or threatened species.

"(l) Authorization.—There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (d), (e), and (f) of this section not to exceed $500,000 for fiscal year 1979 not to exceed $500,000 for fiscal year 1980, and not to exceed $500,000 in fiscal year 1981.".

Sec. 4. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending

September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 5. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(1) by inserting after paragraph (4) thereof the following new paragraphs:

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

"(6) The term 'critical habitat' for an endangered species or threatened species means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would significantly decrease the likelihood of conserving such species."; and

(2) by striking out paragraph (13), as redesignated by paragraph (5) of this section, and inserting in lieu thereof the following:

"(13) The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct segment of the population of any species of vertebrate fish or wildlife which interbreeds when mature.";

(3) by striking out paragraph (15), as redesignated by paragraph (5) of this section, and inserting in lieu thereof the following:

"(15) The term 'State agency' means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.";

(4) by inserting at the end thereof the following new paragraphs:

"(19) The term 'species or habitat degradation' means either or both of the following effects:

"(A) The placing in jeopardy of the continued existence of any endangered species or threatened species listed pursuant to section 4.

"(B) The destruction or adverse modification of any critical habitat of any endangered species or threatened species so listed.

"(20) The term 'permit or license applicant' means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied because of the application of section 7(c)(1) to such agency action;".

(5) by redesignating paragraphs (5) through (16) as paragraphs (7) through (19), respectively, and by redesignating any references thereto accordingly.

SEC. 6. Paragraph (3) of section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended to read as follows:

"(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations.".

SEC. 7. Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by striking out "subsection" in the matter preceding subparagraph (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph" in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (i) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

"(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened:

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.".

SEC. 8. Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended—

(1) in the first and second sentences of subsection (a)(1) by striking out "or who knowingly commits an act in the course of a commercial activity which violates" each place it appears and inserting in lieu thereof "and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates";

(2) in the third sentence of subsection (a)(1) by striking out "$1,000" and inserting in lieu thereof "$500";

(3) in subsection (b)(1) by striking out "willfully commits an act which" each place it appears and inserting in lieu thereof "knowingly";

(4) in subsection (b)(2) by inserting "a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing" after "authorizing";

(5) in subsection (a) by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.";

(6) in subsection (b) by adding at the end thereof the following new paragraph:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution if the defendant committed the offense based on a good-faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species."; and

(7) in paragraph (4) of subsection (g) by striking out "any party" and inserting in lieu thereof "the prevailing party".

SEC. 9. That portion of subsection (a) of section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534) which precedes paragraph (1) is amended to read as follows:

"(a) The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—".

SEC. 10. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)" and by adding the following new paragraph:

"(2)(A) This section shall not apply to—

"(1) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

"(ii) any progeny of any raptor described in clause (1);

until such time as any such raptor or progeny is intentionally returned to a wild state.

"(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.".

SEC. 8. Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended—

(1) in the first and second sentences of subsection (a)(1) by striking out "or who knowingly commits an act in the course of a commercial activity which violates" each place it appears and inserting in lieu thereof "and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates";

(2) in the third sentence of subsection (a)(1) by striking out "$1,000" and inserting in lieu thereof "$500";

Mr. BOWEN (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

COMMITTEE AMENDMENTS

The CHAIRMAN. The Clerk will report the first committee amendment.

Mr. BOWEN. Mr. Chairman, I ask unanimous consent that the committee amendments be considered en bloc, be considered as read, and be printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The committee amendments are as follows:

Page 2, line 24, insert "final" after "the".

Page 2, after line 25, insert the following:

(4) in subsection (c) by inserting at the end thereof the following new paragraph:

(4) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b).

Page 3, line 18, strike out "(4)" and insert in lieu thereof "(5)".

Page 4, line 16, strike out "paragraph" and insert in lieu thereof "paragraphs".

Page 5, line 25, strike out all that follows the period.

Page 5, after line 25, insert the following:

(5) A final regulation adding a species to any list published pursuant to subsection (c) shall be published in the Federal Register not later than two years after the date of publication of notice of the regulation proposing such listing under paragraph (2)(A)(i). If a final regulation is not adopted within such two-year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the Federal Register not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before the date of the enactment of the Endangered Species Act Amendments of 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on such date of enactment.

Page 6, line 19, strike out "(5)" and insert in lieu thereof "6".

Page 8, line 25, strike out "(2)(A)," and insert in lieu thereof "(1),".

Page 10, line 23 insert ", as determined by the Secretary," after "States".

Page 11, line 15, insert after the period the following:

If no appointment is made within such 15-day period, the Endangered Species Committee shall appoint, by a vote of a majority of the members of the Committee, one individual not later than 30 days after the end of such 15-day period.

Page 15; beginning on line 10, strike out "other Federal agencies." and insert in lieu thereof "a Federal agency.".

Page 19 line 24, insert "or the permit or license applicant" after "agency".

Page 20, line 10, insert after the period the following:

Any action for review under this subsection shall receive preference over other matters before the court and shall be heard and determined as expeditiously as the court considers practicable.

Page 25, line 3, strike out "action;" and insert in lieu thereof "action." and closing quotation marks.

Page 23, line 10, strike out "(c)" and insert in lieu thereof "(c) Cooperative Agreements.—".

Page 30, line 13, insert "PROGRAM.—" after "(a)".

Page 30, line 22, strike out "(b)" and insert in lieu thereof "(b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—".

Page 31, after line 17, insert the following:

SEC. 11. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection:

(h) CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d) and 9(a) do not apply to any article (other than scrimshaw) which—

(A) was made before 1830;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1) (A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1) (A), (B), and (C) must be entered into the customs territory of the United States.

Mr. BURGENER. Mr. Chairman, I rise in strong support of the committee amendments on this question. We have had, for the past 5 years, too little commonsense in the enforcement of the Endangered Species Act.

Many zealous bureaucrats have discarded human needs from their considerations with regard to endangered species. The amendments to the act, for the first time, recognize that there are human considerations to be dealt with and people are an important factor in this equation.

In my own congressional district, which includes California's Imperial Valley, the Bureau of Land Management controls 70 percent of the land in that county. Because of the California desert study mandated under the Organic Act of 1976, it appears that thousands of acres will be withdrawn from public use. This is on top of other thousands of acres which have already been regulated as to use by the BLM.

Most recently, the Interior Department has proposed the addition to the endangered species list of the newly-discovered Andrews Dune Scarab Beetle, a beetle—one of thousands of species in the world—which apparently is unique to the Imperial Sand Dunes in eastern Imperial County.

The small remaining portion of the Imperial Sand Hills which are still open to public use are now in further danger of being closed down to the public. I would remind my colleagues that Imperial County offers some of the best recreational opportunities within a short commuting distance of the Nation's 2d and 9th largest cities, Los Angeles and San Diego. Further, the people of Imperial County, many of whom make their living from the land, revere the vast uniqueness their desert environment presents them.

I think the bill we have before us which makes important distinctions between vertebrate and invertebrate species is a good compromise. Under the bill, when determining the critical habitat for an endangered or threatened invertebrate species, the Interior Secretary must consider economic impact and any other relevant impacts before declaring the critical habitat.

This language would help the Imperial County situation which is developing, and I urge the language be maintained.

I also support the several amendments of the gentleman from Tennessee to bring to bear some further human consideration in enforcement of this act.

It appears that the endangered species amendments will restore some balance to the act, which was passed when environmental fervor in the Nation was at a high point. The only difficulty, Mr. Chairman, was that, in that fervor, people were forgotten altogether, and it is for that reason that the committee has had to make the corrections we have before us tonight.

The committee amendments were agreed to.

AMENDMENTS OFFERED BY MR. BEARD OF TENNESSEE

Mr. BEARD of Tennessee. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. Beard of Tennessee: Page 2, immediately after line 2 insert the following new paragraph (1) and renumber:

Section 4(c)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(2)) is amended—

By inserting after "shall" the phrase "within 90 days of the receipt of," and striking the word "upon";

By inserting after "conduct" the phrase "and publish in the Federal Register";

By inserting after the word "of" the phrase "the status of"; and

By inserting after the final period, "Both such review and such finding must be made and published prior to the initiation of any procedures required under Section 4(b)(1) of this Act (16 U.S.C. 1533(b)(1)).

Page 9, line 5: Insert after the word "listed" the phrase "or proposed to be listed", and at page 9, line 17, insert after paragraph (3) the following new paragraph (4), and renumber:

(4) An exemption for an agency action granted under subsection (f) shall constitute a permanent exemption for the purposes of completing such agency action; Provided That a biological assessment has been conducted under paragraph (3).

Page 9, line 11: After the word "completed", add: "within 90 days after the date on which initiated or within such other period as is mutually agreed to by the Secretary and such agency, but not to exceed 180 days in total."

Page 14, line 3; and at page 17, line 23: Strike the word "feasible" and insert in lieu the word "reasonable".

Page 17, line 23: Strike the word "feasible" and insert in lieu the word "reasonable".

Page 22, line 7, strike out "$500,000" and all that follows through line 8, and insert in lieu thereof the following: "$250,000 for the period beginning October 1, 1979 and ending March 31, 1980."

Page 22, line 18, strike out "$25,000,000" and all that follows down through "September 30, 1981" on line 20 and insert in lieu thereof the following: "$12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980".

Page 23, line 3, strike out "$3,000,000" and all that follows down through "September 30, 1981" on line 5 and insert in lieu thereof the following: "$1,500,000 for the period beginning October 1, 1979 and ending March 31, 1980."

Mr. BEARD of Tennessee. Mr. Chairman, I am including in the Record an explanation of each amendment designating the page number and line number involved.

The explanations are as follows:

Mr. Chairman, page 2, line 2, amendment providing for increased notice in the listing and delisting process: This amendment makes several changes to that section of the act which controls the procedures for listing and delisting species. All four changes proposed by this amendment serve to expedite that process.

The first one instructs the Secretary to conduct a review of any petition to list or delist species within 90 days of receipt of the petition.

The second and third changes require that results of status reviews of species proposed to be listed or delisted be published in the Federal Register.

Finally, the fourth change insures that the Secretary will not list any specie or change its status on his own initiative without first conducting the review mandated by this particular section of the act, as amended.

Page 9, lines 5 and 17, amendment regarding a one-time exemption: The purpose of this amendment is to insure that once a project is granted an exemption under the process set forth in this bill, it will not face the entire exemption procedure for a second, third, or fourth time as new species are added to the endangered or threatened lists, or species already on one of the lists are discovered within a project construction area.

The bill already calls for a biological assessment to be conducted for "listed" species. I am proposing that this be extended to a broader assessment, to include species which are only "proposed" to be listed as well. According to the GAO, this type of arrangement would preempt most confrontations between man and species.

Page 9, line 11, amendment to limit the time allowed for conducting a biological assessment: In the event that listed or proposed species are present within a proposed project area, this bill requires the agency involved to conduct a biological assessment to determine whether such species actually will be effected by the project.

However, the bill does not restrict the time period for conducting this assessment. My amendment will restrict the time to a reasonable length, thus assuring that the exemption process, when it is needed, is conducted as expeditiously as possible.

Page 14, line 3; and page 17, line 23, amendments regarding use of the word "feasible": The term "feasible and prudent" is a term of art. The Supreme Court in Citizens to Preserve Overton Park versus Volpe, in 1971 interpreted this phrase to mean virtually every conceivable alternative. The possibilities for alternatives which must be considered if this phrase is used are limited only by the imagination.

This terminology is extracted from the Federal-Aid Highway Act of 1968. Interpretation of this phrase by the Supreme Court and subsequent attempts by the State of Tennessee to comply with the impossible task which this interpretation demands has delayed completion of Interstate 40 through Memphis for over 10 years.

Inclusion of this phrase in H.R. 14104 would guarantee a litigative tool which could be used to delay indefinitely any granting of exemptions allowed under the provisions of this bill.

This amendment replaces the word "feasible" with the word "reasonable" which has no such court interpretation. My amendment would conform this part of the bill to the Senate's language.

Page 22, line 17; and page 23, line 2, amendment to authorize the act for 18 months: Preliminary findings by the General Accounting Office indicate that the Endangered Species Act is incredibly mismanaged and in need of reform. Although I have attempted to address several of GAO's concerns in the amendments I have offered thus far, I believe that the Congress should consider further amendments to the act once the GAO report is released. Accordingly, the committee has agreed to my suggestion for an 18-month reauthorization. This should give all interested parties the opportunity for careful scrutiny of the report and insure that the committee is given adequate time to conduct careful and thorough oversight hearings related to it.

Mr. Forsythe. Mr. Chairman, will the gentleman yield?

Mr. Beard of Tennessee. I yield to the gentleman from New Jersey.

Mr. Forsythe. Mr. Chairman, I rise to point out to the gentleman and to the Chair that these amendments are acceptable to our side of the aisle.

Mr. Bowen. Mr. Chairman, will the gentleman yield?

Mr. Beard of Tennessee. I yield to the gentleman from Mississippi (Mr. Bowen).

Mr. Bowen. Mr. Chairman, the gentleman's amendments are acceptable on this side of the aisle. I feel that these are very constructive amendments.

Mr. Dingell. Mr. Chairman, will the gentleman yield?

Mr. Beard of Tennessee. I yield to the gentleman from Michigan.

Mr. Dingell. Mr. Chairman, the gentleman from Tennessee (Mr. Beard) has been eminently helpful and gracious in working with the committee.

I wish to commend him and I support his amendments.

Mr. Beard of Tennessee. I thank my very fine friend, the gentleman from Michigan.

The Chairman. The question is on the amendments offered by the gentleman from Tennessee (Mr. Beard).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. BOWEN

Mr. Bowen. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bowen: Page 10, strike out line 21 and all that follows down through line 2 on page 11 and insert in lieu thereof the following:

"(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly notify—

"(i) the Governor of each State in which the agency action will occur, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the review board to be established under paragraph (3) and to the Endangered Species Committee for consideration of such application."

Page 11, strike out line 7 and all that follows down through line 20 and insert in lieu thereof the following:

"(i) One individual shall be appointed to the board by the Secretary not later than 15 days after an application is submitted pursuant to paragraph (2).

"(ii) One individual shall be appointed to the board (I) by the President, not later than 30 days after an application is submitted pursuant to paragraph (2) and, after consideration of any recommendations received pursuant to paragraph (2)(B).

"(iii) One administrative law judge shall be selected to serve on the board by the Civil Service Commission in the same manner as administrative law judges are selected under section 3344 of title 5 of the United States Code to be detailed to an agency which occasionally or temporarily is insufficiently staffed with administrative law judges. The use by the review board of such an administrative law judge shall be on a reimbursable basis."

An individual appointed by the President under this subparagraph shall be a resident of a State, if any, in which the agency action will be, or is being, carried out.

Page 16, strike out line 12 and all that follows down through line 17 and insert in lieu thereof the following:

"(F) The President, after consideration of any recommendations received pursuant to subsection (d)(2)(B), shall appoint one individual to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made not later than 30 days after an application is submitted pursuant to paragraph (2).

Mr. BOWEN. Mr. Chairman, my amendment is of a technical nature. It is intended to resolve a concern that has been raised by the Justice Department about the Governor's position on the Review Board and the Committee. The Justice Department is concerned that, by placing the Governor of the affected State on the Endangered Species Committee and by permitting him to make appointments to the Review Board, the bill may violate the appointments clause to the Constitution. The appointments clause provides that Congress may vest the appointment of inferior officers of the United States in the President, heads of departments and courts of law.

The committee has reviewed this issue with both the Justice Department and the American Law Division of the Library of Congress. There is a significant amount of disagreement between the Library of Congress and the Justice Department on this issue. Nevertheless, we felt that it was wise to resolve this issue at this time, rather than have the exemption process subjected to a constitutional challenge at some later point.

The amendment is very simple. Instead of placing the Governor of the affected State on the Endangered Species Committee, the amendment would have the President appoint the sixth member of the committee after receiving the nominations of the Governor. In nearly all cases we would expect the Governor to nominate himself to be appointed by the President.

My amendment also makes a change in the nature of the Review Board. Under the amendment the Review Board would be composed of:

One person appointed by the Secretary;

One person nominated by the Governor and appointed by the President; and

An administrative law judge appointed by the Civil Service Commission.

This approach is faithful to the makeup of the Review Board found in the existing bill. The administrative law judge replaces the third appointee to the Review Board in order to obviate any conceivable constitutional violation.

I believe that this amendment should be entirely noncontroversial. It is simply necessary to insure that the exemption process we are creating in this bill is not vacated by a constitutional challenge.

Mr. FORSYTHE. Mr. Chairman, will the gentleman yield?

Mr. BOWEN. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. I thank the gentleman for yielding.

We have considered this amendment on this side, and we agree to the amendment.

Mr. BOWEN. It is basically of a technical nature to clear up a legal technicality that I think needs to be attended to, and I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi (Mr. Bowen).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ANDERSON OF ILLINOIS

Mr. ANDERSON of Illinois. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Anderson of Illinois:

On page 32, after line 21, add the following new section:

"SEC. 12. Notwithstanding any provision of the Endangered Species Act of 1973 (16 U.S.C. 1631 et seq.) or any regulation promulgated or policy established thereunder, the Secretary of the Interior is authorized and directed to release to Doctor Eugene L. Vickery of Lena, Illinois, a narwhale (Monodon monocerus) tusk cane contained in a shipment consigned to him that was seized by agents of the United States Fish and Wildlife Service at O'Hare International Airport, Chicago, Illinois, on November 30, 1977. For purposes of section 9 and section 11 of such Act, Doctor Vickery shall be considered not to have violated any provision of such Act with respect to the importation of such narwhale tusk cane."

Mr. ANDERSON of Illinois. Mr. Chairman, this is an amendment which I have discussed with the committee on both sides of the aisle. It involves what I think was an unfortunate and unnecessary application of a provision of an international convention on endangered species which has had an entirely inequitable result. It would provide a citizen of the United States with relief in that regard.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman for yielding.

This, I believe, is the amendment the gentleman has discussed with me?

Mr. ANDERSON of Illinois. I have discussed it with the gentleman.

Mr. DINGELL. I have no objection to the amendment and am happy to support it.

Mr. FORSYTHE. Mr. Chairman, will the gentleman yield?

Mr. ANDERSON of Illinois. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. I thank the gentleman for yielding.

We have also reviewed this amendment and have no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. Anderson).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. RONCALIO

Mr. RONCALIO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. RONCALIO: On page 32, after line 21, add new section
(No. 12) as follows:
"The Department of the Army Permit to Basin Electric Power Cooperative for
the Missouri Basin Power Project, issued on March 23, 1978, as amended Octo-
ber 10, 1978, is hereby ratified and shall be deemed to satisfy the requirements of
the National Environmental Policy Act (42 D.S.C. 4321 et seq.) the Endangered
Species Act (16 U.S.C. 1531 et seq.) and the Federal Water Pollution Control
Act (33 U.S.C. 1251 et seq.) as amended; and the Rural Electrification Adminis-
tration loan guarantee commitments and approvals associated therewith relat-
ing to the Missouri Basin Power Project are deemed to satisfy the requirements
of the National Environmental Policy Act, and the Endangered Species Act;
Provided, That following the rendering of a biological opinion by the United
States Fish and Wildlife Service concerning the effect, if any, of the operation
of the Missouri Basin Power Project on endangered species or their critical
habitat, the responsible officers of the Rural Electrification Administration and
of the Army Corps of Engineers shall require such modifications in the operation
of the Project as they and the Secretary of the Interior may determine are re-
quired to insure that actions authorized, funded, or carried out by them, relating
to the Missouri Basin Power Project do not jeopardize the continued existence
of such endangered species and threatened species or results in the destruction
or modification of habitat of such species which is or has been determined to be
critical, by the Secretary of the Interior, after consultation as appropriate with
the affected States."

Mr. RONCALIO [during the reading]. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Wyoming?

Mr. CAVANAUGH. I object.

The CHAIRMAN. Objection is heard.

The Clerk concluded reading the amendment.

Mr. CAVANAUGH. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The gentleman from Nebraska reserves a point of order.

Mr. RONCALIO. Mr. Chairman, before my time begins, I should like to be heard on the point of order.

The CHAIRMAN. The gentleman from Nebraska has reserved a point of order. Does the gentleman from Nebraska desire to state the point of order at this time?

Mr. CAVANAUGH. I do, Mr. Chairman.

The CHAIRMAN. The gentleman will state the point of order.

POINT OF ORDER

Mr. CAVANAUGH. Mr. Chairman, I make a point of order against the amendment on the grounds it is not germaine. The amendment deals with several statutes not before the House committee. It would affect the National Environment Policy Act, 42 U.S.C. 432; the Federal Water Pollution Control Act, 16 U.S.C. 531; the Rural Electrification Act and loan guarantees and approvals thereunder, and legislation creating the Missouri Basin power project.

The amendment could have gone to the Committees on the Interior and Public Works, as those are the committees with jurisdiction over the basic statutes cited.

The amendment imposes duties and burdens specifically on the Corps of Engineers and other agencies, such as the Environmental Protection Agency, which are not subject to specific mandate in the Endangered Species Act, which we are considering today.

The CHAIRMAN. Does the gentleman from Wyoming desire to be heard on the point of order?

Mr. RONCALIO. Yes, Mr. Chairman, I do desire to be heard.

In the first place, the amendment seeks to change none of the statutes which my good friend, the gentleman from Omaha, has cited.

The precedents are clearly established for comparable legislation. I shall read from the most recent one, from Deschler's Procedures in the U.S. House of Representatives, page 477, at which there is cited under the amendments and the germaneness rule:

> § 5.18 For a bill authorizing the construction of a trans-Alaska oil-gas pipeline pursuant to procedures—

That bill came out of this very body not 4 years ago—

> promulgated by the Secretary of Interior and including a prohibition against judicial review on environmental impact grounds of any right-of-way or permit which might be granted, an amendment in the nature of a substitute containing a similar series of safeguards and including an exception from the prohibition against judicial review—to provide a mechanism for expediting other actions challenging pipeline permits—was held germane. 119 CONG. REC. 27673-75, 93d Cong. 1st Sess., Aug. 2, 1973.

The holding at that time survived a challenge against it and was held germane, even though there was a prohibition against providing a mechanism for expediting other actions challenging pipeline permits, whether they be for the Corps of Engineers or any others; so the amendment is clearly germane to the proceedings today.

The CHAIRMAN. Does the gentleman from Nebraska desire to be heard further on the point of order?

Mr. CAVANAUGH. Mr. Chairman, I just reiterate that the amendment does impose new duties and obligations upon agencies of Government not in consideration in this legislation, the National Environmental Protection Policy Act, the Federal Water Pollution Control Act, and the REA Act, and imposes new burdens and obligations upon those agencies not envisioned in this legislation.

Mr. RONCALIO. Mr. Chairman, may I respond?

The CHAIRMAN. The Chair will be happy to hear the gentleman from Wyoming, who has not had an opportunity to respond.

Mr. RONCALIO. Mr. Chairman, the amendment imposes no burden of any kind on anybody. It imposes no burden whatever on the staffers of any of the agencies mentioned by the gentleman from Nebraska. It lets them go about their work and do nothing. It does not impose a duty of any kind.

The CHAIRMAN. Do any other Members desire to be heard on the point of order? If not, the Chair is ready to rule.

The Chair, in exploring the amendment in the very brief time in which the Chair has had to look at this and exploring the cited examples, feels that this is not a question actually of waiver, but rather a question of the expanded authority and responsibility and obligation of the Departments cited by the gentleman from Nebraska in connection with his point of order, such as that calling for expanded authority on the part of the Army Corps of Engineers and the Rural Electrification Administration authorities not covered by the pending bill.

Therefore, based on the brief opportunity the Chair has had, the Chair would find it necessary to sustain the point of order.

AMENDMENT OFFERED BY MR. RONCALIO

Mr. RONCALIO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Roncalio: On page 32, after line 21, add new section (No. 12) as follows:
>
> "The Department of the Army Permit to Basin Electric Power Cooperative for the Missouri Basin Power Project, issued on March 23, 1978, as amended October 10, 1978, is hereby ratified and shall be deemed to satisfy the requirements of the Endangered Species Act (16 U.S.C. 1531 et seq.) as amended; and the Rural Electrification Administration loan guarantee commitments and approvals associated therewith relating to the Missouri Basin Power Project are deemed to satisfy the requirements of the Endangered Species Act; *Provided*, That following the rendering of a biological opinion by the United States Fish and Wildlife Service concerning the effect, if any, of the operation of the Missouri Basin Power Project on endangered species or their critical habitat, the responsible officers of the Rural Electrification Administration and of the Army Corps of Engineers shall require such modifications in the operation of the Project as they and the Secretary of Interior may determine are required to insure that actions authorized, funded, or carried out by them, relating to the Missouri Basin Power Project do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is or has been determined to be critical, by the Secretary of the Interior, after consultation as appropriate with the affected States."

Mr. RONCALIO [during the reading]. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record, and that I be given an opportunity to explain the amendment, as I did the last one.

The CHAIRMAN. Is there objection to the request of the gentleman from Wyoming?

Mr. CAVANAUGH. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

The Clerk will read.

The Clerk concluded the reading of the amendment.

Mr. CAVANAUGH. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN. The gentleman from Nebraska (Mr. Cavanaugh) reserves a point of order on the amendment.

The Chair recognizes the gentleman from Wyoming (Mr. Roncalio).

Mr. RONCALIO. Mr. Chairman, I cannot imagine how a point of order could be reserved on the amendment at this point.

The precise objections to the last amendment were stricken from this amendment, and this amendment is left with a citation of only one statute, and that is the Endangered Species Act, which is precisely the statute before us at this time. I cannot imagine an attack on the germaneness provision at this point.

I have stricken from my first amendment all reference to the Army Corps of Engineers, all reference to the National Environmental Policy Act of 1969, and all reference to the Federal Water Pollution Control Act. There is only one act cited in the amendment, and that is precisely the one before us.

Mr. FORSYTHE. Mr. Chairman, may I ask, are there copies of the amendment available before us? We do not have a copy.

Mr. RONCALIO. Mr. Chairman, I will give the gentleman one if he will let me strike a few words out of the one he has now.

Mr. ROUSSELOT. Mr. Chairman, let the record show that.

The CHAIRMAN. It is the Chair's understanding that the gentleman from Nebraska (Mr. Cavanaugh) reserves a point of order?

Mr. CAVANAUGH. I reserve a point of order on the amendment, Mr. Chairman.

Mr. DINGELL. With all due respect, Mr. Chairman, could we see a copy of the amendment? I ask that with the utmost respect for my friend, the gentleman from Wyoming (Mr. Roncalio).

The CHAIRMAN. Let the Chair again ask the gentleman from Nebraska (Mr. Cavanaugh), is he making his point of order?

Mr. CAVANAUGH. I reserve a point of order, Mr. Chairman.

The CHAIRMAN. The gentleman from Wyoming (Mr. Roncalio) is recognized for 5 minutes in support of his amendment.

Mr. RONCALIO. I thank the Chair.

Mr. Chairman, I ask unanimous consent that I may proceed for an additional 2 minutes. I believe I will have need for more time.

The CHAIRMAN. The Chair will inquire of the gentleman, what was his request again?

Mr. RONCALIO. Mr. Chairman, I ask unanimous consent that I may be granted 2 additional minutes?

The CHAIRMAN. Is there objection to the request of the gentleman from Wyoming?

There was no objection.

The CHAIRMAN. The gentleman from Wyoming (Mr. Roncalio) is recognized for 7 minutes in support of his amendment.

Mr. RONCALIO. Mr. Chairman, this amendment offered to the Endangered Species Act seeks to in fact put moot an injunction that has been delayed incidentally 7 days by the very judge himself. That injunction is for halting construction on a coal-fired generating project on the Laramie River in Wyoming, 300 miles upstream from a 60-mile strip of the Platte River near Kearney, Nebr., which was designated 6 months ago by the U.S. Fish and Wildlife Service as one of the 13 overnight stopovers, a proposed or designated critical habitat, actually a stopover, for the sandhill crane and the whooping crane on its annual migration from northern Canada to Texas and Louisiana.

The whooping crane is now up to 75 in population. There were only 20 when I was a kid. They are not being endangered or diminished if they have gone from 20 to 75. I have seen the whooping cranes in Yellowstone Park, and I love them. I would be the last one to do anything to diminish the whooping crane or the trumpeter swan or the sandhill crane, for that matter.

Nevertheless, certain environmental people, carried away against logical reason, went to court on the ground that the environmental statements were not adequate. The chief counsel for the National Wildlife Federation said the guts of this action, the guts of this injunction, is not whether or not the environmental impact statement has been complied with, they want more water in Nebraska. That, I submit, Mr. Chairman, brings up the morality of this case to the floor of this House. We are the final arbiters of changing effect of judgments of the courts. We do it every other Monday morning when 10 or 15 consent bills are on the calendar. We do it every Tuesday with bills here on suspension of the rules on the floor of the House. We write law here constantly. The Constitution says we have a duty to do that. If we go too far, the final adjudicator is, of course, the U.S. Supreme Court, and it can and often does overrule us, or qualify our actions.

I am here on a proper basis asking that commonsense be returned to the administration of the Endangered Species Act. The judge in Nebraska did not even hold that this plant was constituting a danger to the whooping crane. He did not hold that. I will continue to state that the case has much more to do with an old water fight between Nebraska and Wyoming, and environmental law is being used as a ruse, as a device, for this action, thereby doing an enormous disservice to environmental protection in these States.

Obviously, nothing can be done with regard to the decision. It is another branch of Government. But we can adopt this amendment.

I am just another Member. I am following right behind the gentleman from Tennessee (Mr. Beard) and the gentleman from Georgia who spoke last night, and nine other Members who are almost similarly situated. My facts are even more shocking. It is not even a critical habitat. It is an overnight stopover. Six hundred million dollars of taxpayers' money has already been spent on this program, two-thirds of it virtually completed. Yet we are in danger of a stop on something enormously improper and unfair in the administration of this act.

Now, it is admitted that this plant does not jeopardize the whooping crane.

I believe in the guest editorial in the current issue of "Frontiers," it says that the U.S. Supreme Court decision is environmentally correct in two fundamental grounds: First, none of us has a right to destroy a species of life and second, we must have respect for law. I submit that is what we are trying to reflect in this particular amendment. It does not go so far as to state that there is no responsibility on the part of this plant. Again, notice is short. As you look at this three-State area, you see a land so arid as to preclude sensible use of ground water in slurrying coal.

Wyoming and Nebraska farmers have installed irrigation systems for 300 miles along the Platte River. They have been doing that now for many years. The farmers use electricity generated by REA and REA's are scheduled for power from the plant now enjoined.

Water is becoming a most crucial crisis in the Rocky Mountain West. Yesterday we were talking about an energy crisis. The water crisis is equally upon us, my friends. My colleague and friend from Omaha would argue against it, yet he does not realize how critical water and power have become to all of us.

Do you want to send me back to Wyoming, after 10 years as your friend and colleague, to face 2,000 unemployed people in Wheatland on account of a totally unjustified thing like this, the Endangered Species Act?

I should hope not.

These 13 flytops for the whooping crane are located throughout the central flyway, which has long been familiar to duck hunters. The population of the whooper is up to 75 now, compared to 20 when I was a kid.

There are some who want to vote against this bill and kill it in almost an obscene manner, because of abuses and excesses in its administration.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. RONCALIO. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. Is the gentleman telling us that his amendment will not have an adverse impact upon the cranes?

Mr. RONCALIO. That is a fact, a fact sustained by the U.S. district court in Lincoln, Nebr. It did not find that the whooping crane is endangered by this project. It merely finds that the water levels are becoming low, and the sand benches in that area are getting low during the spring migration and fall return of the sand cranes in low water years, and once in a while you see a whooping crane among them.

Even the U.S. Fish and Wildlife Service says a 3-year study is necessary before that question can be answered adequately, either yes or no.

Mr. Chairman, my amendment to the Endangered Species Act of 1978 pertains only to a court decision that has all but halted construction on the Grayrocks Dam and Reservoir located on the Laramie River in Wyoming. My amendment, if adopted, would ratify the Corps of Engineers permit, issued March 23, 1978, as amended October 10, 1978, and would hold that the permit satisfies the requirements of the Endangered Species Act.

The need for this amendment arose from U.S. district court desision handed down last week at Lincoln, Nebr., ordering the Basin Electric Power Cooperative to halt work on the Grayrocks Dam and Reservoir, which is a part of the Missouri Basin power project that includes the Laramie River powerplant, now under construction in Wheatland, Wyo. Judge Urbom ruled that the environmental impact statements on the MBPP failed to consider the full impact of the project on Nebraska and Wyoming water supplies, migratory waterfowl, including the whooping crane, fish, and agriculture.

However, facts are that the decision in Nebraska had less to do with the effect upon water fowl and the whooping crane than it has to do with trying to get more water from Wyoming for Nebraska. In his enthusiasm over the court injunction, Oliver Houck, general counsel for the Washington-based National Wildlife Federation said, in an Associated Press release from Lincoln:

> The guts of the lawsuit isn't whether the environmental impact statement is accurate or inaccurate. it's whether we can get more water into Nebraska.

Houck went on to say:

> Someone who thinks this case is about the theoretical perfection of an environmental impact statement is missing the point entirely.

It would appear that the plaintiffs were using the Endangered Species Act and NEPA as an excuse behind which to launch an assault on the long-established, settled water adjudication between Nebraska and Wyoming, which resulted from the famous U.S. Supreme Court decision, *Nebraska* v. *Wyoming* (325 US 589) handed down in 1945. If this is the case, Judge Urbom's decision should be set aside.

Obviously, Mr. Chairman, there is nothing that Congress can do in regard to that judicial decision, which is in another branch of Government. What we can do is adopt my amendment to the Endangered Species Act, which will have a much more timely effect than is usually the case with long, drawnout litigation of this type.

I know that my colleagues will want to compare this court decision with the court injunction in Tennessee that halted construction of a nearly completed dam on the Little Tennessee River, because it would destroy the critical habitat of the snail darter. I want to point out to my colleagues that the Grayrocks Dam decision is in no way similar to the snail darter litigation.

In the Tennessee case, the habitat for the snail darter was an area directly above the dam and that habitat may occur no where else in the world. If it is the only habitat for the snail darter and that may well be in dispute, then the inundation of that area would critically affect the existence of the snail darter.

But in the Grayrocks case, a 60-mile stretch of the Platte River, which is over 300 miles from the Laramie River power station, is only one of several proposed or designated critical habitats along the central migratory flyway of the whooping crane and other migratory water fowl. These critical habitats provide protected overnight roosting sites and feeding stations along the flyway which stretches from Canada's Northwest territories to the gulf coast of Texas. There are at least 13 other proposed or designated critical habitats along this migratory route. I, myself, have seen whooping cranes on the Yellowstone Lake in years gone by. I believe that the Grayrocks decision has virtually nothing in common with the snail darter case in Tennessee.

It is an admitted fact that it cannot be said that the Missouri Basin power project will jeopardize the whooper or its critical habitat. The judge made no such finding.

The Fish and Wildlife Service will not be able to give an opinion, so it says, on that question until 3 years of study are completed. In the meantime, the Court appears to have required that the project be shut down, because it cannot be determined until the studies are completed precisely what, if any, measure could or should be taken to insure that the project operates without adverse impacts on the whooper or its critical habitat. As matters now stand, the Court has concluded that neither the Rural Electrification Administration nor the Corps of Engineers reserved sufficient authority to require modifications that appear necessary to them after the 3-year study is completed.

My amendment speaks directly to that issue and provides the necessary recourse for requiring such modifications which are identified as necessary by the Fish and Wildlife Service to protect the whoopers and their habitat.

The decision in Nebraska jeopardizes the Missouri Basin power project, which has been under construction for over 2 years. The decision not only halts construction on the Grayrocks Dam and Reservoir, it could also halt construction on the Laramie River power station in Wheatland. These two projects have been developed by consumer-owned, rural electric cooperatives from an eight-State region. These two projects employ more than 2,000 construction workers and have a monthly payroll of $3.5 million. About 180 workers are building the dam, and another 2,000 persons are constructing the Laramie River power station, whose first two 500-megawatt units are 42 percent complete.

Over the weekend, my home phone in Cheyenne was ringing off the hook with calls from Wheatland, Wyo. residents who are most concerned about the future of the powerplant. Wheatland residents have been working with Basin Electric Power Cooperative officials over the past 4 years, to analyze and plan for the impact that would come with construction of the powerplant. In terms of impact concerns, the cooperation between Wheatland and the cooperative has been an outstanding example of what can be done to plan for and alleviate impact problems and needs before they become unmanageable.

The Nebraska case not only jeopardizes millions of dollars in construction costs; it also jeopardizes the economic well-being of a prairie boom town of over 5,000 residents, that has placed a large amount of time, effort, and financial resources to research and plan for the impact of the Laramie River powerplant.

I urge my colleagues to support my amendment, which affects only the Missouri Basin power project.

POINT OF ORDER

Mr. Cavanaugh. Mr. Chairman, I make a point of order against the amendment on the basis that the amendment is not germane to the bill. The differences between this amendment and the amendment previously offered are that the gentleman from Wyoming has stricken specific references in the first portion of his amendment to the National Environmental Policy Act, the Federal Water Pollution Control Act, and the Rural Electrification Act, but the gentleman's amendment has not stricken new responsibilities imposed upon the Rural Electrification Administration, the Army Corps of Engineers, the Fish and Wildlife Service, and the Secretary of the Interior.

The amendment would continue to require biological opinion by the Fish and Wildlife Service, and require additional duties of responsible officers of the REA, the Corps of Engineers; to require modifications of the project.

In addition, it requires the Secretary of the Interior to consult with the appropriate affected States, which would also be a new obligation not envisioned in the act imposed upon agencies of Government. In addition to that, the amendment is not germane to the section. It appears as a new section following section 32, a section dealing with certain antique articles.

So, I would renew my point of order as to germaneness both to the bill and to the section.

The Chairman. The Chair is prepared to rule.

Actually, the amendment adds a new section, let the Chair say to the gentleman from Nebraska, which in the opinion of the Chair would need only be germane to the bill as a whole.

However, the earlier matter cited by the gentleman from Nebraska in his point of order dealing with the expanded authority and responsibilities and obligations of the Rural Electrification Administration and Army Corps of Engineers is still a part of the amendment as the Chair views it.

Therefore, the Chair would have to sustain the point of order on the basis that it would still expand authorities which are not within the coverage of the bill.

AMENDMENT OFFERED BY MR. RONCALIO

Mr. RONCALIO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Roncalio: On page 32, after line 21, add new section (No. 12) as follows:
>
> "The Department of the Army Permit to Basin Electric Power Cooperative for the Missouri Basin Power Project, issued on March 23, 1978, as amended October 10, 1978, is hereby deemed to satisfy the requirements of the Endangered Species Act (16 U.S.C. 1531 et seq.).

Mr. CAVANAUGH. Mr. Chairman, I reserve a point of order against the amendment.

Mr. RONCALIO. Mr. Chairman, this is a new amendment, in the third and I hope final form. I do not wish to add to the debate. Other Members have matters they want to bring up.

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Nebraska (Mr. Cavanaugh) desire to pursue his point of order?

Mr. CAVANAUGH. Mr. Chairman, I make a point of order against the amendment. The amendment is not germane to the section of the bill to which it is offered, and in addition it imposes duties upon the Secretary of Commerce that are nowhere else mentioned in the bill.

Mr. ANDREWS of North Dakota. Mr. Chairman, I would like to be heard briefly on this point of order.

If a project of this type is stopped because of an interpretation of an act of the Congress, how then can the rules of the Congress prohibit the same Congress from amending the action so that it does not affect a certain type of project? This is basically what the argument is all about. And to tie up projects which would prevent the homeowners from getting their electricity at a sensible cost because of the interpretation of the law—if it cannot be fixed in this body, where can it be fixed?

The CHAIRMAN. Does the gentleman from Colorado (Mr. Evans) desire to be heard on the point of order?

Mr. EVANS of Colorado. Very briefly, Mr. Chairman.

I think the amendment now pending, offered by the gentleman from Wyoming, is clearly in order. The simple thing this amendment does is declare a legislative finding of fact relative to the Endangered Species Act. Thus it is clearly germane.

The CHAIRMAN. The Chair is ready to rule. This occupant of the Chair had, as indicated, to make a rather rapid analysis of the previous amendment, not having been aware of the questions at issue. The present amendment offered by the gentleman from Wyoming would appear, based on the information that the Chair has available and on the precedents available to him including the precedent cited by the gentleman from Wyoming, to be germane and completely in the proper form, and therefore overrules the point of order in connection with the amendment of the gentleman from Wyoming.

Mr. CAVANAUGH. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, first of all I want to say to my friend, the gentleman from Wyoming, I have no desire to send him home to 2,100 irate citizens. My opposition to this amendment I do not believe necessarily would have the effect of resulting in the eventual elimination of this project.

The facts of this project are simply stated. On October 2, 1978, the U.S. District Court for Nebraska enjoined further construction of the Grayrocks Dam on the Laramie River, Wyo., on the grounds that the Federal agencies which are responsible for authorizing and financially assisting the project, namely the Corps of Engineers and the Rural Electrification Administration, had violated section 7 of the Endangered Species Act; section 102 of NEPA, and section 404 of the Clean Water Act. Grayrocks is designed to serve as a water supply for a 1,500-megawatt powerplant—the Laramie-River Station—being constructed by the Basin Electric Power Cooperative of Bismarck, N. Dak. The court did not enjoin construction of the powerplant.

The central issue in the case is the degree of adverse effect that the project will have upon the designated critical habitat of the endangered whooping crane. The whooper's critical habitat, which lies between Lexington and Denham, Nebr., on the Platte River, is maintained by high river stages which periodically scour the channel and recharge adjacent wetlands. These peak flows have been drastically reduced by existing upstream diversions; approximately 60 river miles of crane habitat have already been destroyed by cumulative streamflow depletions. There is no question that the project will impact the remaining habitat; the only question is how severe that impact will be. The court expressly found that "virtually any reduction is critical to the bird population."

The State of Nebraska is not out to kill this project. Rather is has pressed for the adoption of water conservation measures, such as dry cooling towers or replacement water, which would preserve the whooper's habitat while allowing completion of the powerplant. The project sponsors have resisted these modifications on economic grounds. The injunction was a last resort to force the responsive Federal officials to seriously consider the available water conservation options.

The violations which the court found are not technicalities. The court's detailed—48-page—decision recounts a deliberate and persistent disregard of the procedural and substantive requirements of important environmental planning laws. In reaching its decision to enjoin construction, the court carefully weighed all the evidence presented during 7 days of trial, replied to each of the legal arguments advanced, and fairly balanced the competing equities of the many parties. In short, the result is amply supported by the record.

The basic issue before us is whether or not we are going to overturn a reasonable procedure which is designed not to destroy this project but to assure that all of the equities involved, the water flow into Nebraska, the critical habitat, the power project, are accommodated, and they have not been accommodated through the volunteer actions of the project's sponsors up to this point.

Mrs. SMITH of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. CAVANAUGH. I yield to the gentlewoman from Nebraska.

Mrs. SMITH of Nebraska. Mr. Chairman, I thank the gentleman for yielding. I would like to take this opportunity to speak against the adoption of the Roncalio amendment. The main concern here is one of water—the lifeblood of my home State of Nebraska.

I certainly recognize the need for additional power in western Nebraska and other Western States. I do not oppose the construction of the powerplant in Wyoming. The main question here, however, is how much will the construction of the Wyoming dam and the powerplant result in the loss of water in the Platte River as it runs through my home State? We do not know how much water levels will be affected. There are no assurances there will not be harmful effects on irrigation, wetlands, and wildlife habitat.

The purpose of this amendment is to nullify a judicial decision which has temporarily halted the construction of the powerplant in Wyoming. The amendment was hurriedly drafted: there have been no hearings on it; we do not know all of the ramifications. Before we act hastily on this very serious matter, we should have an opportunity to fully consider what we are doing.

Mr. JOHNSON of Colorado. Mr. Chairman, will the gentleman yield?

Mr. CAVANAUGH. I yield to the gentleman from Colorado.

Mr. JOHNSON of Colorado. Mr. Chairman, according to what the gentleman from Nebraska (Mr. Cavanaugh) has just said, the State of Nebraska is in favor of certain modifications, but, according to the information that I have, and the gentleman might correct me, because what I have is a statement prepared by the counsel for the Missouri Basin project, in which it says that the judge found that:

> (a) The Grayrocks Reservoir is properly sized, (b) the project was justified in not adopting "dry cooling towers", (c) the need for the power and the timing of the project to supply the power had been demonstrated, and (d) the project had, in fact, obtained water supplies which curtail the demand the project will make on the Laramie River.

That ties into everything, every point the gentleman has made with respect to the State of Nebraska. Are those statements in the judge's opinion?

Mr. CAVANAUGH. May I inquire the source of the gentleman's quotation?

Mr. JOHNSON of Colorado. I received a copy of a statement called "Fact Sheet, Grayrocks Project," which was prepared by counsel for the Missouri Basin project, power project, and it indicated the judge's opinion held those things that I just quoted to you.

Mr. CAVANAUGH. I have not read the entire 40-page opinion.

Mr. ROBERTS. Mr. Chairman, if the gentleman will yield, would the gentleman tell me how many whooper cranes they have in Nebraska? Have they even got one? They are all down in Texas because that is where the whooper reservation is. How many whoopers have ever been on this project?

Mr. CAVANAUGH. I have never conducted an inventory.

Mr. ROBERTS. We have got one case in Texas where fish and wildlife wanted to stop a project because one whooper landed there. This may be a case in point. I hope we have judgment enough to stop cases like this.

Mr. BOWEN. Mr. Chairman, although I have great personal sympathy with the problem which the gentleman from Wyoming faces, as manager of the bill I would like to state that, on behalf of the committee, we have clear objections to the amendment the gentleman from Wyoming (Mr. Roncalio), has offered. The amendment does violate the principles of the bill. The bill itself has established an exemption procedure under which projects can be considered for exemption. We are trying diligently to establish a procedure to handle problems just like this one, and I sincerely hope that our bill arrives at that end.

Mr. BAUCUS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today to support the amendment offered by my colleague from Wyoming (Mr. Roncalio). A large part of Montana is served with electricity by rural cooperatives which are dependent on two large wholesale generating cooperatives associated with the Missouri Basin power project.

Our 25 local cooperatives get their power through the Central Montana Electric G. & T. Cooperative at Billings and the Upper Missouri G. & T. Electric Cooperative at Sidney, both members of Basin Electric.

This amendment pertains only to litigation and a court decision that has all this project should be dealt with any differently than any other project in the country which has an endangered species problem. This is not to belittle the importance or significance of it. I have personal sympathy with the gentleman's position; but there are other objections.

The court opinion in this case apparently has indicated that the REA has not consulted with the Fish and Wildlife Service. The opportunity is still before the concerned parties in Wyoming to enter into the consultation process and to have it reviewed by the three-man board we are establishing in this legislation. Certainly, it would be my hope that they would rule favorably to the gentleman's position.

Mr. RONCALIO. Mr. Chairman, will yield?

Mr. BOWEN. I yield to the gentleman from Wyoming.

Mr. RONCALIO. Mr. Chairman, I want to express my deep appreciation to the gentleman from Mississippi (Mr. Bowen) and to concur in his observations on the difficulty in proceeding under a new law for 18 months and going through these proceedings. I agree that this is the route which should be taken. However, if there can be an end to the jeopardy to others, that would be the proper thing. They are not going to complete construction if they cannot get water to the projects, and the cost could be more than $1 billion.

Mr. Chairman, I would like to think that the amendment is not all that difficult to adopt.

Mr. BOWEN. It was my understanding that there were three different statutes which could provide jeopardy to the project, not only the Endangered Species Act, but the Federal Water Pollution Control Act and NEPA.

We can address the endangered species situations right here today, but would that help the gentleman out?

Mr. RONCALIO. It would indeed. It would very much. Obviously, they are going to be in court for a long time; and obviously, my amendment had language in it before which was, unfortunately and ill advisedly, stricken, and that was that there would be a duty on that power project to change in 5 or 6 years to a dry cooling tower if they had to. It could have been compelled under my amendment, but that was taken out.

I believe we are on the same track now. All I want is some language in this legislation to bring the parties closer together so that will negotiate their differences and use some reason with respect to their administration of the species.

Mr. BOWEN. I certainly hope the gentleman does have some success. My point of view is not a question of whether or not the project has merit, but whether or not we are to design a piece of legislation which provides an exemption process, and then whether the House should, item by item, provide exceptions to that. That is the issue which I think we are addressing at this moment.

Mr. JOHNSON of Colorado. Mr. Chairman, I think the gentleman from Mississippi (Mr. Bowen) has made a statement and taken a position which is reasonable. However, the reason I disagree with it is because of the hundreds of millions of dollars which have already been spent on this particular project. I think the gentleman's position is totally reasonable prospectively, but to apply it retroactively, I think, is unreasonable and unfair in this particular case, and I think I can justify that to the gentleman.

The judge found in his opinion that there had been no testimony that the Gray Rocks project would have any adverse effect on the whooping crane habitat. The testifying officials from the Fish and Wildlife Service testified that they did not know whether there would be any adverse effect.

Mr. Chairman, this is important to the State of Wyoming and to all of the Rocky Mountain West, including Nebraska, and I would ask the Members' indulgence. I realize it is a regional approach and a regional problem, but it is important to all of us from that area.

The judge ruled in essence that there had not been proven that the avoidance of any adverse impact on the whooping crane habitat was assured. That is the kind of an opinion that, if one is associated with the law, after awhile one wonders why did the judge make that kind of ruling. This is a judge from Lincoln, Nebr., Mr. Chairman.

Let me point out to the Members that we have interstate compacts between Wyoming and Nebraska and interstate compacts between Colorado and Nebraska. Colorado and Wyoming are not using all the water that they are entitled to under the interstate compacts. They have to put that water to beneficial use someplace along the line or they will lose it. Nebraska has been using the water that Colorado is entitled to under the compact with Nebraska, and Nebraska has been using water that Wyoming is entitled to under the compact between those two States.

Naturally, Nebraska—and I do not say this in any derogatory manner toward the gentleman from Nebraska (Mr. Cavanaugh)—naturally the State of Nebraska will do anything that it possibly can to continue to get the use of that water. They have a compact. They have contract obligations. But if they can find any other legal means by which they will prevent the States of Wyoming or Colorado from utilizing that water, they will do that, and this is one of the weaknesses of this bill in that allows other elements to be utilized in the operation of the act.

Let me tell the Members what is the real kicker in this thing. Two hundred miles below the Gray Rocks Dam is an outfit called the Kingsley Dam on the North Platte River. It is located in Nebraska. It has a storage capacity of 1,800,000 acre-feet of water. Gray Rocks has a storage capacity of 101,000 acre-feet of water. The Kingsley Dam, which is operated by the State of Nebraska, is not a Federal project. It completely controls the flow of the North Platte downstream from Gray Rocks. It is operated without regard for downstream wildlife, including the so-called critical whooper habitat. The effect of Gray Rocks will depend totally on how the Kingsley Dam is operated in Nebraska, and they utilize that for their own irrigation projects.

The judge that rendered that decision was, as I say, a judge from the State of Nebraska. He probably would have the same kind of problems with his home folks as a Colorado judge would have if he gave any more water to Nebraska or Arizona than he felt that he could and legally get away with it. But this is an example of how this bill, how this Endangered Species Act, is being utilized for purposes other than to protect endangered species.

In this case the studies have been done. It has been testified that there was no assurance that there was any kind of damage done to this critical habitat. The judge found in favor of the environmental impact statement—and we are talking about an area that is 275 miles away from the alleged critical area. There is no environmental student that I know of—and when I spoke to the Members earlier, I mentioned to them about the person from my hometown who does these kinds of studies, and he says it is impossible to study and make a clear determination as to what the effect will be on a habitat that is 250 or 300 miles away because we do not know what will occur in the process of the operation of the intervening projects in the operation of the river.

Mr. Udall. Mr. Chairman, will the gentleman yield?

Mr. Johnson of Colorado. I yield to the gentleman from Arizona.

Mr. Udall. I thank the gentleman for yielding.

I am a strong supporter of the Endangered Species Act, and the whooping cranes of America have not better friend than Morris K. Udall. But I am also a supporter of the gentleman from Wyoming, Mr. Teno Roncalio, on this amendment. This does not involve amendment or undercutting or broad exemption of the Endangered Species Act. By a special, specific exemption of the act it takes care of a tough specific situation. If 225 miles away some damage might be done someday to the habitat of the whooping crane, the Secretary of the Interior is given the power and authority to protect the whooping crane, which comes first. If necessary the powerplant will be shut down, or they will have to modify its kind of operation

Mr. Chairman, we want an Endangered Species Act. We are going to get ourselves in real trouble if we do not try to find some way of avoiding this kind of situation and keep it from occuring.

It gets the whole act into trouble and into disrepute. The situation just cries out for the kind of reasoned, sensible kind of compromise that the gentleman from Wyoming, Mr. Teno Roncalio, is offering.

Mr. Johnson of Colorado. Mr. Chairman, I thank the gentleman. I agree totally.

Mr. **Bowen**. Mr. Chairman, will the gentleman yield?

Mr. **Johnson** of Colorado. I yield to the gentleman from Mississippi.

Mr. **Bowen**. Mr. Chairman, I agree with the gentleman in some respects. Unfortunately, the legislation we have on the statute books has been used for years mainly to get water projects and other kinds of important development projects in this country stopped, rather than to protect endangered species. That is why we wrote a bill to address this point. That is why I am simply standing before you today defending the integrity of the bill we are looking at in this committee, one which provides a procedure for exemptions that worthy projects can more forward.

Mr. **Johnson** of Colorado. Mr. Chairman, I do not disagree with the gentleman on other projects; but the one half way completed, one stopped after studies have been made and money expended seems to me should be exempted.

Mr. **Bowen**. Mr. Chairman, if the gentleman will yield further, the court has indicated they do not know whether there is any danger to the cranes. It shows if the REA would sit down with the Fish and Wildlife Service to consult, they might well win the case in this matter.

Mr. **Abdnor**. Mr. Chairman, I really could not let this time go by without commending my esteemed colleague, the gentleman from Wyoming (Mr. Roncalio) for the fine presentation the gentleman has made and the need for this amendment and compliment the gentleman for the perseverence he has had to get this thing acceptable to the legislation.

Mr. Chairman, South Dakota is rich in agricultural resources but poor in energy resources. We are growing, and we must have increased supplies of electric power to continue our efforts to produce food and fiber for the Nation and the world, and to help reduce our balance-of-payments deficit.

The rural electrics of my State are all part of the Basin Electric Power Cooperative system, and all are dependent for increased power supplies in the years to come on the Missouri Power Basin project's Laramie River Station in Wyoming. We have 35 rural electric distribution cooperatives, and 25 municipal electrical systems as well, which need this power and will be hurt if there are delays which magnify costs.

We, in South Dakota, as do the people in Wyoming, hold our environmental values high. In my opinion, the Laramie River Station is a model of environmental soundness.

In addition, planning for the project included probably an unprecedented effort to assist local citizens and leaders to alleviate socioeconomic problems which result when a major new construction project impacts on a small community, like Wheatland and I think my colleague from Wyoming will agree.

It would be a serious miscarriage of justice, I believe, if all the fine efforts to meet environmental and socioeconomic problems which have gone into this project were rewarded by enforced delays in construction and drawn-out litigation as costs rise and needed new power deliveries recede into the indefinite future.

Our esteemed colleague from Wyoming (Mr. Roncalio) has offered an amendment which will correct this situation without endangering wildlife values. I hope our other colleagues will join us in supporting the Roncalio amendment.

Mr. THONE. Mr. Chairman, will the gentleman yield?

Mr. ABDNOR. I yield to the gentleman from Nebraska.

Mr. THONE. Mr. Chairman, water, of course, is key in this dispute. Obviously, there is a complex problem here, a real serious problem needing a carefully thought out solution, but this last minute, this 13th-hour approach from the gentleman from Wyoming (Mr. Roncalio), is not the answer.

The Governor of Nebraska has wired the Nebraska congressional delegation as follows:

> A congressional block, backed by the Basin Electric Power Group and their associates, not sympathetic to Nebraska's vital Platte River water resources are reportedly mustering support for amending H.R. 14104 to negate Nebraska's efforts to reasonably protect our water resources.
>
> They are attempting to rush through legislation in the last four days before adjournment to abridge our successful law suit challenging the issuance of the 404 permit by the Corps of Engineers and approval by REA of loan guarantees.
>
> I urge your joint and concentrated effort to prevent adoption of any such amendment.
>
> J. JAMES EXON,
> *Governor Nebraska.*

Mr. BAUCUS. Mr. Chairman, I rise today to support the amendment offered by my colleague from Wyoming (Mr. Roncalio). A large part of Montana is served with electricity by rural cooperatives which are dependent on two large wholesale generating cooperatives associated with the Missouri Basin power project.

Our 25 local cooperatives get their power through the Central Montana Electric G. & T. Cooperative at Billings and the Upper Missouri G. & T. Electric Cooperative at Sidney, both members of Basin Electric.

This amendment pertains only to litigation and a court decision that has all but halted construction on the Grayrock Dam and Reservoir located on the Laramie River in Wyoming. If this amendment is adopted, it would ratify the Army Corps of Engineers permit issued to Basin Electric Cooperative for the Missouri Basin power project.

The gentleman from Wyoming (Mr. Roncalio) has told you that construction on this project has been stopped after more than 2 years of work and an expenditure of $800,000,000 because of a recent Federal court decision.

The Federal District Judge ruled that the environmental impact statements on the MBPP failed to consider the full impact of the project on water supplies, migratory water fowl, including the whooping crane, fish and agriculture.

The Roncalio amendment speaks specifically to the issue of the impact of the Missouri Basin project on the critical habitat of the whooping cranes.

The point made by Mr. Roncalio cannot be underestimated. The Fish and Wildlife Service has said that the Missouri River Basin project may or may not jeopardize the whooping crane or its North Platte habitat. The Fish and Wildlife Service has estimated it will take to 2 years to complete the necessary studies to assess the impact of the project. This amendment provides the necessary recourse for requiring such modifications which are identified as necessary by the Fish and Wildlife Service to protect the whoopers and their habitat. In addition, this amendment will allow the project to proceed.

Without this amendment, the entire Great Plains region will be adversely affected. I urge my colleagues to support this amendment, which affects only the Missouri Basin power project.

Mr. FORSYTHE. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I regret that I do, because I fully recognize the very seriousness of the situation that exists with this particular project; but as has been said before, we are trying in this legislation to create the system with which these kinds of conflicts can be handled. This particular project, which has got an injunction at the district court level, has the appeals process open to it.

I do not think that we should start in this bill exempting specific projects from the Endangered Species Act and to try to do that here on the floor of the House when we really do not have all the facts in our hands and have the opportunity to balance the considerations that are involved as we move to these issues, as much as I know it is a problem for this project. And I understand there are some others that are going to be considered here yet this afternoon.

Mr. STUDD. Mr. Chairman, will the gentleman yield?

Mr. FORSYTHE. I yield to the gentleman from Massachusetts.

Mr. STUDDS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I have a feeling that I know the result of this vote, partially, I think, because there are 70 cranes left and only one Teno Roncalio. The affections of the House are quite clear.

Nonetheless I have to say that I agree with the gentleman from New Jersey (Mr. Forsythe), and I would ask the Members, those who intend to vote for this amendment, to think carefully about what it is they are saying as they approve this amendment. They are in effect saying that in the judgment of the Congress the crane is not endangered by this project.

I do not know whether it is or whether it is not. I dare say there is not a Member of this House who in all honesty could state categorically whether it is or whether it is not. We have to have procedures to resolve conflicts like this which demand a degree of expertise. I submit that all the Members of the U.S. Congress, in all humility, have no way of possessing such expertise.

I remind the Members that if we make an exception in this case, we are going to be asked again and again, whenever there is a controversy over a particular project, to determine whether or not in our collective wisdom a species is endangered.

Mr. Chairman, I suggest to the Members that we do not have that wisdom.

Mr. RONCALIO. Mr. Chairman, will the gentleman yield?

Mr. FORSYTHE. I yield to the gentleman from Wyoming.

Mr. RONCALIO. Mr. Chairman, let me only say to my good friend, the gentleman from Massachusetts (Mr. Studds), that the judge does not indicate in the ruling that there is any danger whatsoever of any kind to the whooper as a result of this. He found some failure to comply with respect to Nebraska waterfowl and migratory wildlife. There was no finding in this case that the whooper was endangered.

Mr. STUDDS. Mr. Chairman, if the gentleman will yield further, I just scanned the judge's ruling, and the judge found that the agencies which have the responsibilities to make that determination had failed to do so. The fact is that we do not know, which is precisely my point.

Mr. **Roncalio.** Mr. Chairman, we are not in disagreement. I agree precisely with what the gentleman said, but he did not make the finding that there was any damage or that the species was threatened.

Mr. **Studds.** But we do not know, and that, it seems to me, is the situation.

Mr. **Forsythe.** Mr. Chairman, if I may be allowed to reclaim my time, I think the point is that the issue is really as to just how this problem was created. That is really what the problem is, and I hope the amendment will be defeated.

The **Chairman.** The question is on the amendment offered by the gentleman from Wyoming (Mr. Roncalio).

The question was taken; and on a division (demanded by Mr. Hughes) there were—ayes 29, noes 14.

So the amendment was agreed to.

AMENDMENT OFFERED BY MRS. BOGGS

Mrs. **Boggs.** Mr. Chairman, I offer an amendment.

The Clerk read as follows.

Amendment offered by Mrs. Boggs: On page 31, line 22 (after the figure "4(d)): Strike the word and figure "and 9(a)" and insert in lieu thereof a comma and the word and figures "9(a) and 9 (c)".

Mrs. **Boggs.** Mr. Chairman, I would like, first of all, to compliment the subcommittee and the committee on bringing forth a fine piece of legislation.

Mr. Chairman, this amendment is but a perfecting amendment to a provision already included in section 11 of the bill before us today.

As the committee so ably explained in its report, the purpose of section 11 is to exempt bona fide antiques from coverage of the act if the articles in question were fabricated before 1830, are composed in whole or in part of any listed species, and have not been repaired or modified with any listed species or product thereof.

The reason the date 1830 was selected is because experts in the antique field have indicated that articles produced prior to this date can be readily distinguished from those made after 1830.

I should point out that the legislation would mandate that items eligible for the exemption must enter the United States through one specified port in each of the eight U.S. Customs Service regions. The eight regions are headquartered in Boston, New York, Baltimore, Miami, New Orleans, Houston, Los Angeles, San Francisco, and Chicago. At each of these ports, the Customs Service working with the Interior Department, would have experts available to make determinations as to eligibility of items for exemption from the act.

In addition to permitting the import of certain antiques otherwise covered by the act, this legislation would permit the sale or transfer of items composed in whole or in part from endangered species, if the items were fabricated prior to 1830 and have not been repaired or modified with any endangered species product prior to the enactment of the act—December 28, 1973.

Mr. Chairman, I commend the committee for their diligence in addressing a problem I have observed in the execution of the 1973 act. It is important for it to be understood that this legislation is not intended to weaken the Endangered Species Act in any way. I believe it is a fine piece of legislation that is serving the vital function as your Chairman has said of maintaining "a healthy diversity of wildlife species" and of conserving all of the important ecosystems on which the wildlife species of the world depend for survival. However, the bill, as reported only provides an exemption from those prohibited acts enumerated in section 9(a) of the 1973 act.

In addition, section 9(c) of the 1973 act makes it illegal to trade in species if they are listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora. My amendment would simply exempt bona fide antiques fabricated before 1830 which are composed of species on the Convention list to be imported and traded in the United States.

Mr. BOWEN. Mr. Chairman, will the gentlewoman yield?

Mrs. BOGGS. I yield to the gentleman from Mississippi.

Mr. BOWEN. I thank the gentlewoman for yielding.

Mr. Chairman, I would like to tell the gentlewoman that the committee has no objection to this amendment. It seems to be a very constructive amendment. I would also like to thank the gentlewoman for her suggestions for some of the language that is found in this Endangered Species Act.

Mrs. BOGGS. I thank the gentleman.

Mr. FORSYTHE. Mr. Chairman, will the gentlewoman yield?

Mrs. BOGGS. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. Mr. Chairman, we have looked at the amendment on this side, and we have no objection to it.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Louisiana (Mrs. Boggs).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. TREEN

Mr. TREEN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Treen: Page 32, after line 21, insert the following:

(b) Any person who imported, after December 27, 1973, and on or before the date of the enactment of this Act, any article which—

(1) meets the requirements set forth in section 10(h)(1)(A) and (B) of the Endangered Species Act of 1973 (as added by subsection (a));

(2) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4 of such Act of 1973;

(3) was forfeited to the United States before the date of the enactment of this Act, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11 of such Act of 1973; and

(4) is in the custody of the United States on such date of enactment;

may, before the close of the one year period beginning on the date of the enactment of this Act, make application to the Secretary concerned for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary concerned prescribes. If on the basis of any such application which is timely filed, the Secretary concerned is satisfied that the requirements of this subsection are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after date of return, be deemed to be a lawful importation under such Act of 1973.

Page 31, line 18, after "Sec. 11." insert "(a)".

Mr. **Treen**. Mr. Chairman, I rise to offer a technical amendment to a portion of H.R. 14104 which I sponsored in committee. Section 11 exempts antique articles made before 1830 from the provisions of this act as long as those articles have not been repaired since 1973 with parts of an endangered or threatened species. Congresswoman Boggs had introduced similar legislation (H.R. 4658) which was the subject of hearings by the Subcommittee on Fisheries, Wildlife Conservation and the Environment.

My proposal was adopted in committee by voice vote. All of the witnesses at the hearings supported the concept of exempting antiques since the purpose of the endangered species is to protect living species rather than those that lived 150 years ago.

My amendment today will extend relief to those who imported antiques between the date of enactment of the Endangered Species Act of 1973 and the date of enactment of this legislation. However, it places the burden on the person importing the antique to prove to the appropriate Secretary's satisfaction that the item seized was a genuine antique. The amendment gives those individuals one year from enactment to apply for the return of antiques forfeited during the 5 years since the 1973 act. Only those items in the custody of the United States as of the date of enactment of this legislation are affected by this amendment. As is the case under section 11, items which have been repaired since December 27, 1973, with any part of an endangered or threatened species are not exempt from the prohibitions of the Endangered Species Act.

I have discussed my amendment with attorneys for the National Marine Fisheries Service and the Fish and Wildlife Service as well as committee counsel. They agree that this amendment is workable. They feel that the 1-year period is needed not only to give adequate notice and opportunity to file to individuals who have forfeited antiques but to give the respective Secretaries time to promulgate guidelines after public comment.

Mr. **Bowen**. Mr. Chairman, will the gentleman yield?

Mr. **Treen**. I yield to the gentleman from Mississippi.

Mr. **Bowen**. I thank the gentleman for yielding, and I wish to say that the committee has no objection to this amendment. It seems to be a sound amendment, and I hope it will be adopted by the committee.

Mr. **Forsythe**. Mr. Chairman, will the gentleman yield?

Mr. **Treen**. I yield to the gentleman from New Jersey.

Mr. **Forsythe**. Mr. Chairman, we have looked at this amendment. We have no objection to it. We think it is a good amendment.

The **Chairman**. The question is on the amendment offered by the gentleman from Louisiana (Mr. Treen).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DUNCAN OF TENNESSEE

Mr. **Duncan** of Tennessee. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Duncan of Tennessee: Page 31, line 20, strike out "subsection" and insert in lieu thereof "subsections".

Page 32, line 21, strike out the closing quotation marks and the final period.

Page 32, after line 21, insert the following:

"(i) Tellico Dam and Reservoir Project.—The provisions of this Act shall not apply with respect to the construction and operation of the Tellico Dam and Reservoir project in Tennessee. The harassment, harm, killing, or wounding, if any, of any endangered species or threatened species attributable to the construction or operation of such project shall not be deemed to be a taking of any endangered species within the meaning of section 9(a)(1) of this Act or the taking of any threatened species if a prohibition against the taking thereof is imposed by regulations pursuant to section 4(d) of this Act.".

Mr. Duncan of Tennessee. Mr. Chairman, I rise to offer an amendment to H.R. 14104, the reauthorization legislation for the Endangered Species Act of 1973. My amendment specifically exempts the TVA's Tellico Dam and Reservoir project from the provisions of the Endangered Species Act, and nothing more.

Many of my colleagues are probably aware of the project I refer to, because it has gained national attention in recent months. But I would briefly like to refresh your memory as to the facts of this case.

First of all, this is not a project TVA started in violation of the act. Tellico was begun in 1967 after almost unanimous congressional authorization in 1966. The Endangered Species Act was not passed until 1973, and the snail darter was not listed until 1975. By this time 8 years had passed and many millions of dollars had been spent.

I would not be here today asking that Tellico be exempted, if it was not now nearing completion, but, my colleagues, it is 99 percent complete. Time and again Congress has stated that it intends for Tellico Dam and Reservoir be completed. Administration budget requests and actual appropriations over the years have included the Tellico project. More recently the House, on June 10, 1978, in its wisdom, spelled out in the appropriations legislation that $1,846,000 was for the completion of the Tellico Dam and Reservoir. Senator Sasser ordered this same language in the Senate, and it was adopted by that body. The request for the Tellico funds had and was a part of President Carter's budget request.

To date, $107 million of taxpayer's money has been spent on this project.

Furthermore, this money was invested in good faith. Tellico Dam is located in an economically depressed area of east Tennessee. Jobs and industry are needed to stem the flow of outmigration by the young people of the area. Many people gave up their land and homes in the hope that they would receive something more in return.

Construction workers have been thrown out of work because of the court stoppage of the project. Labor, business, the media, and an overwhelming majority of the people in the area want the project completed. I might also say that this project will furnish electricity for 22,000 homes.

To me, all of this is ample justification for the amendment. However, I would like to also speak to the issue in view of the Endangered Species Act. In 1975, TVA, in cooperation with the Fish and Wildlife Service, began transplanting snail darters from the Little Tennessee River to the nearby Hiawassee River. Recently the Interior Department announced that those 710 transplanted darters have since multiplied to as many as 3,700. Also, the number of snail darters in the Little Tennessee has decreased to about 500, raising the very real possibility that the Hiawassee is now the snail darter's critical habitat.

Mr. Chairman, it is evident that the Little Tennessee can no longer be defended as the snail darter's critical habitat, and given this, there is no reason why Tellico Dam should not now be exempted from the Endangered Species Act, and completed so that its benefits may be brought to the people of this depressed area.

Time and money have been invested, commitments have been made. It is now time to reap the benefits of that investment and fulfill our commitments. Mr. Chairman, my amendment allows us to do that and I strongly urge my colleagues to support it. Thank you.

Mrs. **Lloyd** of Tennessee. Mr. Chairman, I rise in support of the amendment offered by my friend Mr. Duncan. This project which effects both of our districts has remained in a state of suspended animation since the ruling of the Sixth Circuit Court of Appeals. In affirming that lower court ruling, the Supreme Court made note that interpretation of the Endangered Species Act which precluded completion of the Tellico Dam was good law, but poor legislation.

As my friend has explained, the project is for all intents and purposes complete. The project was approved and begun prior to the enactment of the Endangered Species Act. Every indication available points to the fact that the snail darter is surviving and in fact prospering in habitats other than the Little Tennessee River. Specifically in the Hiawassee River.

The area surrounding this project lies within the definition of the Appalachian region. Unemployment is generally high, and there is a substantial outmigration of younger workers. This area has an available labor force, rail, and utility interconnects. Completion of this project will contribute significantly to the economic viability of our region.

I would urge my colleagues on the basis of fundamental fairness to approve this amendment. I yield back my time.

Mr. **Dingell**. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this probably is the most serious single aspect of the controversy which exists as regards the endangered species legislation. While I do not blame the gentleman from Tennessee and the gentlewoman from Tennessee who are offering the amendment, it should be known it is a bad amendment and goes far beyond the correction of the problem as it exists as regards Tellico.

I would like to break my discussion into two parts. The first is the question of the other parts which have carefully not been alluded to in the offering of the amendment. In point of fact, what the amendment says is that the harassment, harming, killing, or wounding of any endangered species or threatened species shall not be deemed to be a taking within the provisions of the Endangered Species Act.

So not only is the project being exempted but the whole definition of how one affects the endangered species in the area is being changed so that permission is being given here by legislation fiat to complete the Tellico Dam in spite of the fact that the court has held that it was being constructed on contravention of the law and without the required consultations which were supposed to take place to protect and to preserve the species.

But this goes still further. It says if we want to go out and hunt, if we want to seine, if we want to fish, if we want to dynamite or use a telephone in the old-fashioned and time-honored version of fishing long used in the area, we may do so without in any way contravening the provisions of the statute.

Everybody says Tellico is a bad situation. We have a $100 million dam sitting down there.

First of all, the dam was opposed from its inception by the overwhelming number of people in the area. It was opposed even by the Governor of the State, and it was opposed in hearings held in the area.

It is a proposal where we have what was at the time of the construction an outlaw agency which arrogantly, flagrantly, and vigorously disregarded what they knew to be the clear thrust of the law.

They arrogantly, flagrantly and vigorously disregarded what they knew to be the clear thrust of the law.

They simply, in their arrogance, said that the law does not apply to TVA. They refused to consult with TVA. They refused to take any steps which might enhance or mitigate or to obviate some of the adverse features which would occur with regard to this particular action. As a result, they wound up falling not only under the bane of the Endangered Species Act but also falling under the bane of the National Environmental Protection Act because they had refused to comply with that.

Now we find ourselves, when TVA come forward and said that they can correct the problem—they are proceeding to transplant the species into another stream where there is a large number. They are at this time analyzing whether or not there is any advantage to the area on a cost-benefit basis of continuing with the closure of the dam.

Some of the benefits that were supposed to lie in connection with that particular project were the provisions which related as regards an industrial city which was supposed to be constructed. Boeing was supposed to construct the city. They have said, no, there is no cost benefit to this and we are not going to construct that city.

They have withdrawn.

Many of the industrial benefits remain available for roads and railway sites, which are currently available, and TVA has said they are going to do it. Immense value, even as regards tourism, as regards hunting and fishing, and as regards returning the massive amount of lands which would have been flooded, to produce virtually no electric power.

You are talking about flooding some of the ancestral homelands of one of the great Indian nations of this country. But, more importantly, you are talking about destroying farmland where the topsoil is 15 feet deep.

There is a real question as to whether the cost-benefit ratio at this particular time is greater to stay with the closure of the dam and the flooding of the area or whether the Nation would be better served to simply disregard this ill-conceived project and proceed to return the land to agriculture for the benefit of the citizens of the area, for employment and for tourism because, as one opponent of the dam has pointed out, it is a whole lot easier to pick a tourist than it is to pick a bale of cotton.

Now, Mr. Chairman, I promised I would yield to the gentleman from Tennessee (Mr. Duncan) and I so yield.

Mr. **Duncan** of Tennessee. Mr. Chairman, the gentleman mentioned that the Governor of Tennessee was opposed to this project.

The Governor of Tennessee is strongly in favor of the construction of this project. So is the legislature, they voted 9 to 0 that they wanted the project completed.

Mr. **Dingell**. Mr. Chairman, for the benefit of the gentleman, permit me to say I said one of the Governors of Tennessee in its earlier days was opposed to the project, as was the majority of the legislature at that time.

What has happened is that TVA, with its usual bureaucratic use of public funds, has now wormed itself into a position where it has a project that now has public acceptance.

Mr. **Duncan** of Tennessee. Is the gentleman not also familiar with the report prepared by the Department of the Interior and the Tennessee Valley Authority, which says that the TVA did cooperate? The gentleman is also aware of the fact that in the committee hearing, the Department of Commerce people said that the TVA did what they were supposed to do, is he not?

Mr. **Dingell**. No, that is not correct.

Mr. **Duncan** of Tennessee. The fact is that as long as the district court had held that they could continue the project, they continued the project.

Mr. **Dingell**. They continued the project. They built that project in active violation of a court order. For 21 days they were in active violation of a court order, and that is on the records of the court. I am also familiar with it. The document referred to says that they have not been in cooperation with the Interior Department. They are now in cooperation, and they are suffering some vilification from the proponents of this particular project because they are now cooperating with Fish and Wildlife Service.

Mr. **Duncan** of Tennessee. Once the court held against them, they cooperated 100 percent.

Mr. **Dingell**. No, that is not so.

Mr. **Duncan** of Tennessee. They did everything the circuit court of appeals said when it ruled the dam should not be completed.

Mr. **Dingell**. The gentleman is totally in error. For 21 days they were building this project in open defiance of the law.

Mrs. **Lloyd** of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. **Dingell**. I yield to the gentlewoman from Tennessee.

Mrs. **Lloyd** of Tennessee. Mr. Chairman, I thank the gentleman for yielding.

My colleague Mr. Duncan and I happen to represent the area encompassing the Tellico Dam and know of the overwhelming support for the project and, Mr. Chairman, I would submit that the gentleman in the well has gone the full gamut of those so-called environmentalists objections to this vital source of energy and industry. We must move forward and complete the Tellico Dam which is now 90 percent complete.

Mr. **Dingell**. Mr. Chairman, I would simply observe that the law now provides a mechanism for this project to go forward within the framework of the provision we have before us, and I would urge rejection of the amendment.

Mr. **Quillen**. Mr. Chairman, I rise in support of the amendment to exempt Tellico Dam, in support of the amendment offered by my friend and neighbor, the gentleman from Tennessee (Mr. Duncan) and the gentlewoman from Tennessee (Mrs. Lloyd).

Mr. Chairman, when this measure was before the Committee on Rules, I had a little 3-inch fish in one of the water pitchers at the committee table. It was only 3 inches long. I used it to demonstrate what the snail darter has done not only to the economy in Tennessee, but to power production in the valley. A dam has been stopped because of this 3-inch fish which has been transplanted to another habitat, and it is living and progressing in its new environment. It is not in danger.

Mr. Chairman, later on this afternoon, we are going to have an energy bill before the House. The emphasis of this administration and of this country is to produce more power and more energy. I think if we let this little fish, this little 3-inch snail darter, which is living in another habitat and progressing and flourishing, stop the completion of this dam, we ought to look at the matter in all seriousness and face up to the reality of it.

We all must live in harmony with nature. We know that, but when we realize that this dam is not being completed as a result of this little fish, then we should take another look at the whole matter.

Mr. Chairman, I would urge my colleagues to support this amendment.

Mr. **Forsythe**. Mr. Chairman, again I reluctantly rise to oppose this amendment. It does again, as with the last amendment, I think create a problem.

Mr. Chairman, there was reference to the report of the Tennessee Valley Authority and the Department of the Interior of August 10, 1978. I think the most significant line this whole report—and it was an indepth report—is in the introduction.

> It is entirely possible that the project can be completed as originally planned, by using the flexible approach engaged by the Endangered Species Act.

It is not yet determined as to whether the transplanting of the snail darter is actually effected, but it is well on its way, and to tear apart the Endangered Species Act to set a further precedent for a legislative treatment of a species I just do not think is the correct way to go. The wisdom of the author may not follow the line of the gentleman from Michigan that this is far more valuable to now convert this project on the current cost-benefit ratio to other uses. We must remember while much money has been spent, relatively little of that is in concrete. The overwhelming share of the money is in real estate, and this value is not to be lost if it is converted. So we do have, I think, an opportunity to give full consideration without this amendment. As has been said, this is just a procedure that we try to create in this legislation.

Mr. **Duncan** of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. **Forsythe**. I yield to the gentleman from Tennessee.

Mr. **Duncan** of Tennessee. I thank the gentleman for yielding. Would the gentleman agree that on the amendments offered by the gentleman from Tennessee (Mr. Beard) and adopted, that it would take at least a year or more to implement the review process?

Mr. **Forsythe**. I suspect that time frame is not that far off.

Mr. **Duncan** of Tennessee. I think I have shown my friend the Tellico Dam, and the concrete is all in except about $1,800,000. It is ready to close. I could almost take my Boy Scouts down and close it myself. The gentleman said it is not much concrete. The concrete is there, and it is ready to close.

Mr. **Forsythe**. I said that the value of the $100-plus million is not that much in concrete itself. It is in all of the other things, particularly in land acquisition. I would ask if, for instance, the Tennessee Valley Authority has applied for a delisting on the basis of the transplantation of the snail darter that might solve the whole problem.

Mr. Duncan of Tennessee. They have not. Our people want to get back to work. The TVA did not stop the dam; the court stopped the dam. It is up to the TVA whether they want to finish it or not. Once we give them the authority to go, a court injunction is in force, and we would like to finish it and, as I say, get our people back to work.

Mr. Forsythe. As I said, the report indicates the TVA and the Department of the Interior think it can be done without legislation.

Mr. Duncan of Tennessee. We have the right to use our wisdom in the House, and it can shorten the process by several months.

Mr. Forsythe. The gentleman does not even need this amendment, if TVA comes into compliance as a result of the transplanting taking place and the delisting.

Mr. Duncan of Tennessee. We will starve to death by a year from now.

The Chairman. The time of the gentleman has expired.

Mr. Roncalio. Mr. Chairman, I would like to make a historical observation about these hallowed halls we work in and the ones on the other side of the Rotunda. Far and away the most famous American in the finest, most loyal, and dedicated sense, in my opinion, whoever came out of Nebraska was not William Jennings Bryan but George Norris. George Norris made great the ambition that made a politician out of me, because I worked for Senator Joseph C. O'Mahoney who worked with George Norris. He was the father of TVA, and the goodness that he brought was the preservation of our capitalistic system by giving it conscience and improving the balance between the social and the public and the private sector. I would be less than an ingrate if I sat down and did not speak for my friend, the gentleman from Tennessee, having just visualized his support for my dilemma in Wyoming against Nebraska, George Norris' home State.

I make this historical observation at this time as we carry on some 50 or 60 years later fighting over the very principles of law and need for law that Norris enunciated.

I do not know the answer to my dilemma and I do not know the answer here; but I believe my speaking here in behalf of my Tennessee friends is not inconsistent with my ideal that no one has the right to destroy species.

I read the report of the TVA that there are some 2,000 or 3,000 snail darters transported to Lake Hiawassee. If that is the fact situation, it ought to develop a quick decision by the Supreme Court or by the makers of the law here that they desire that direction to be taken.

Mr. Studds. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the amendment.

Mr. Chairman, I do not really think the question before us is who was the best Senator from Nebraska, or the historic merits or demerits of the Tennessee Valley Authority.

The question before us in this amendment is not whether or not the Tellico Dam ought to proceed. It is not even whether the conversations that have been going on may result in the resolution of this dispute without much further delay.

The question really is whether or not there is any point, I think, in our proceeding to debate the bill before us and, effectively and eventually, if we continue to adopt amendments like this, whether there is any point in extending the authorization of this statute.

Let me read again the amendment pending before us. It is only two sentences long. It is quite simple and straightforward. The first sentence states simply:

> The provisions of this Act shall not apply with respect to the construction and operation of the Tellico Dam and Reservoir project in Tennessee.

The second sentence reads:

> The harassment, harm, killing, or wounding, if any, of any endangered species or threatened species attributable to the construction or operation of such projects shall not be deemed to be a taking of any endangered species within the meaning of this Act.

It is a complete and total waiver of the Endangered Species Act. And it goes even beyond the preceding amendment of the gentleman from Wyoming and says that, even if the construction of this project does result in the harm or the killing of any endangered species, we will proceed in any event.

I would suggest to this committee, as I say, regardless of whether or not a species is endangered by this project, and regardless of whether the project ought to proceed with construction, that Members ought to give very careful thought, indeed, before giving their support to an amendment which, in effect, constitutes a repeal of the heart and soul of this statute. Either we intend to continue with some respect for other forms of life and to continue our determination that we will not take the ultimate arrogant step, in my opinion, of consciously and deliberately extermination other forms of life, or we do not.

I would ask, before voting on this amendment, that you read it with care. The whole purpose of the bill before the committee at this time is to establish a far more satisfactory procedure than we have had in the past for resolving the kind of dispute that has led to the Tellico Dam and controversy in Tennessee. We do not need this procedure, we do not need this act if every time there is a dispute the Congress of the United States is going to waive all the provisions of the act and ignore all the resolution of conflict procedures which we have spent many months putting together and simply determine, as this amendment would have us do, that there is no endangered species. The amendment even goes further and says that even if there is an endangered species and if the project would kill it, we want to do it anyway.

I would like to think there is a certain amount of humility left in us and we ought to assert it by defeating this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee (Mr. Duncan).

The question was taken; and on a division (demanded by Mr. Duncan of Tennessee) there were—ayes 34, noes 17.

RECORDED VOTE

Mr. STUDDS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic devise, and there were—ayes 231, noes 157, not voting 42, as follows:

[Roll No. 920]

AYES—231

Abdnor
Addabbo
Alexander
Anderson, Calif
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Ashbrook
Barnard
Bauman
Beard, Tenn.
Benjamin
Bennett
Bevill
Boggs
Bolling
Bowen
Breaux
Breckinridge
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burleson, Tex.
Burlison, Mo.
Butler
Caputo
Carter
Cederberg
Chappell
Clausen, Don H.
Clawson, Del.
Cleveland
Cochran
Coleman
Collins, Ill.
Collins, Tex.
Conable
Cornwell
Cotter
Coughlin
Cunningham
D'Amours
Daniel, Dan
Daniel, R. W.
de la Garza
Delaney
Dent
Derwinski
Devine
Dicks
Dornan
Duncan, Oreg.
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
English
Erlenborn
Ertel
Evans, Colo.
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Findley
Flippo
Flood
Flowers
Foley
Ford, Tenn.
Fountain
Fuqua
Gammage
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gore
Grassley
Gudger
Guyer
Hagedorn
Hall
Hammerschmidt
Hanley
Hansen
Harrington
Harsha
Hefner
Heftel
Hightower
Hillis
Holland
Holt
Horton
Hubbard
Huckaby
Hyde
Jacobs
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kasten
Kazen
Kelly
Kemp
Kindness
Krueger
LaFalce
Lagomarsino
Latta
Leach
Lederer
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Lott
Luken
Lundine
McCormack
McDonald
McEwen
McKay
Mahon
Marriott
Martin
Mathis
Mattox
Mazzoli
Michel
Miller, Ohio
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Murphy, Ill.
Murtha
Myers, John
Natcher
Nix
O'Brien
Oberstar
Perkins
Pickle
Poage
Pressler
Preyer
Price
Quayle
Quillen
Rahall
Railsback
Regula
Rhodes
Risenhoover
Roberts
Robinson
Roncalio
Rose
Rostenkowski
Rousselot
Runnels
Ruppe
Santini

AYES—Continued

Satterfield
Schroeder
Schulze
Sebelius
Shuster
Sikes
Simon
Sisk
Skelton
Slack
Smith, Nebr.
Snyder
Spence
Stangeland
Stanton
Steed
Stockman
Stump
Symms
Taylor
Thompson
Thone
Thornton
Trible
Tucker
Ullman
Vander Jagt
Volkmer
Waggonner
Walker
Walsh
Wampler
Watkins
White
Whitehurst
Whitley
Whitten
Wiggins
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Wright
Wylie
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Young, Tex.
Zablocki
Zeferetti

NOES—157

Akaka
Ambro
Ashley
Aspin
AuCoin
Bafalis
Baldus
Baucus
Beard, R.I.
Bedell
Beilenson
Biaggi
Bingham
Blanchard
Blouin
Boland
Bonior
Bonker
Brademas
Brodhead
Brown, Calif.
Brown, Mich.
Burke, Mass.
Burton, John
Burton, Phillip
Carr
Cavanaugh
Clay
Conte
Conyers
Corcoran
Corman
Cornell
Danielson
Davis
Dellums
Derrick
Dingell
Dodd
Downey
Drinan
Early
Eckhardt
Edgar
Edwards, Calif.
Eilberg
Emery
Fascell
Fenwick
Fish
Fisher
Fithian
Florio
Ford, Mich.
Forsythe
Fowler
Fraser
Frenzel
Glickman
Gradison
Green
Hamilton
Hannaford
Harkin
Harris
Hawkins
Hollenbeck
Holtzman
Howard
Hughes
Jeffords
Jordan
Kastenmeier
Keys
Kildee
Kostmayer
Krebs
Leggett
Lent
Long, Md.
McClory
McCloskey
McDade
McHugh
McKinney
Madigan
Maguire
Mann
Markey
Marks
Meyner
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, N.Y.
Moakley
Moffett
Mottl
Murphy, Pa.
Myers, Gary
Nedzi
Nolan
Nowak
Obey
Ottinger
Panetta
Patten
Patterson
Pattison
Pease
Pepper
Pike
Pritchard
Rangel
Reuss
Richmond
Rinaldo
Rodino
Roe
Rogers
Rooney
Rosenthal
Roybal
Russo
Ryan
Sawyer
Scheuer
Seiberling
Sharp
Smith, Iowa
Solarz
Spellman
St Germain
Staggers

NOES—Continued

Stark
Steers
Steiger
Stokes
Stratton
Studds
Traxler
Tsongas
Udall
Van Deerlin
Vanik
Vento
Walgren
Waxman
Weaver
Weiss
Whalen
Winn
Wirth
Wolff
Wydler
Yates

NOT VOTING—42

Ammerman
Applegate
Armstrong
Badham
Burke, Calif.
Burke, Fla.
Carney
Chisholm
Cohen
Crane
Dickinson
Diggs
Flynt
Frey
Garcia
Heckler
Ichord
Ireland
Le Fante
Lehman
Lujan
McFall
Marlenee
Meeds
Mikva
Milford
Mitchell, Md.
Moss
Murphy, N.Y.
Myers, Michael
Neal
Nichols
Oakar
Pettis
Pursell
Quie
Rudd
Sarasin
Shipley
Skubitz
Teague
Treen

The Clerk announced the following pairs.

On this vote:

Mr. Crane for, with Mrs. Heckler against.
Mr. Dickinson for, with Mr. Garcia against.
Mr. Frey for, with Mr. Mikva against.
Mr. Rudd for, with Mrs. Burke of California against.

Messrs. Minish, Patten, and Wolff changed their vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MRS. MEYNER

Mrs. Meyner. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mrs. Meyner: Page 30, strike out line 20 and all that follows through page 31, line 17.

My amendment is a simple one. It merely strikes section 10 from the bill. This provision exempts raptorial birds—birds of prey—from the protection of the Endangered Species Act. It is an unprecedented, unnecessary, and damning addition to a law that has been carefully drafted as a comprehensive national policy. Unlike the rest of this bill, and the Endangered Species Act itself, section 10 is a special interest provision that caters to those who wish to exploit the law for commercial purposes.

Section 10 asks us to include, for the first time, a legislatively mandated exemption to the act. The precedental value of this exemption is, at best, damaging. The listing of endangered species has always been within the jurisdiction of the Department of the Interior. If the evidence indicated compelling reasons to alter the classification of raptors, administrative mechanisms to accomplish that reclassification already exist.

Mr. Chairman, the section 10 exemption applies to raptors, and their progeny, held in captivity at the time of the enactment of H.R. 14104. Supporters of the exemption claim that since a bird must be captively bred or held at the time of enactment, the exemption will not have an effect on the populations of species in the wild. For this reason, they claim, the exemption does not contradict the intent of the Endangered Species Act. However, my amendment is prompted by the fact that it is almost impossible to prove that a bird has been stolen from the wild. If it owner claims that it was in captivity at the time the law was enacted. It is for this reason that Interior has not changed its regulations.

Raptors are valuable birds. Because they can be sold for as much as $5,000 per bird, there is a strong incentive to steal them from the wild. In fact, California conservationists have had to resort to installing electronic surveillance systems in nests to guard baby peregrine facons from overzealous falconers.

Mr. Chairman, section 10 is supported by a small special interest group. I see no reason to enact a special provision for this group, many of whom have exploited raptorial birds in the past. One of the leading supporters of this exemption was convicted of illegal importation of peregrine falcons from Spain in 1974.

Mr. Chairman, I wish to emphasize that I am not attempting to outlaw falconry. There are plenty of unendangered species of birds that falconers are able to use.

The Endangered Species Act is crucial for the protection of all endangered species. It is contradictory to the intent of the act to begin granting exemptions.

I ask my colleagues to join me today in striking section 10, an unprecedented and unwarranted exemption to the existing law.

Mr. DRINAN. Mr. Chairman, will the gentlewoman yield.

Mrs. MEYNER. I yield to the gentleman from Massachusetts.

Mr. DRINAN. Mr. Chairman, I comment the gentlewoman from New Jersey (Mrs. Meyner) for her comments and associate myself with her remarks.

Mr. MAGUIRE. Mr. Chairman, will the gentlewoman yield?

Mrs. MEYNER. I yield to the gentleman from New Jersey.

Mr. MAGUIRE. Mr. Chairman, I thank the gentlewoman for yielding. I also wish to associate myself with her remarks.

I think it is not only an excellent amendment; it is an absolutely essential amendment because some of these birds are in danger of becoming extinct. There is not any reason in the world that these particular birds should be excluded from the coverage of the act, and I do hope the House will join with the gentlewoman from New Jersey in closing what really is a special-interest exemption, with no justification.

Mr. DERWINSKI. Mr. Chairman, will the gentlewoman yield?

Mrs. MEYNER. I yield to the gentleman from Illinois.

Mr. DERWINSKI. I thank the gentlewoman for yielding.

Before I raise a question, I first wish to commend the gentlewoman from New Jersey for the cooperation on the project we shared together on the Committee on International Relations. But my question is, does the gentlewoman's obviously heartfelt concern for endangered species extend to the Republican Party as well?

Mrs. MEYNER. It does extend to the Republican Party and to other forms of birds like the "Ruffled Spouse," the "Double-breasted Seersucker," the "Great American Regret," the "Morning Grouse," the "Midnight Bed Thrasher," and other such species.

The CHAIRMAN. The time of the gentlewoman has expired.

Mr. LEGGETT. Mr. Chairman, I rise in opposition to the amendment. This amendment would keep the Department of the Interior restriction from dealing with these peregrine falcons. For the Members' information, this is an endangered species bill. The peregrine falcon is an endangered species. There are currently 50 pairs in the wild and 200 pairs that are in private hands, in falconer hands.

People from Colorado and New Mexico and other parts of the country have come before our committee. This amendment to partially exempt the progeny of the 200 pairs currently legally held, allowing the trafficking in those birds, has received the unanimous support of the subcommittee that heard this matter and of our full committee. We thought that we ought to loosen up this act at least to this extent.

The genleman from California (Mr. Dornan), offered this amendment. I had it in my bill at one point.

Mr. DORNAN. Mr. Chairman, will the gentleman yield?

Mr. LEGGETT. I will yield to the gentleman from California, Mr. Dornan, at this point to make further amplification.

Mr. DORNAN. I thank the gentleman.

Mr. Chairman, if our colleagues would just bear with us for a few more minutes, we have a peculiar situation. Everyone agrees upon one fact: We must protect these majestic native American birds, the peregrine falcons. But what we have is awful confusion about the way we should do it. The people who brought this amendment to me are falcon lovers—I am only their instrument. After years and years of work to save the falcon, they were the right folks to conclusively prove to me that the National Audubon Society, Cornell University, and their great team out in Denver, Colo., and everyone who is interested in saving peregrine falcons which are almost extinct, want this special language in the bill for the following very simple reason. Without it peregrines disappear from the face of the Earth. The bird is already extinct in all of our Eastern States, including the State of the distinguished gentlewoman from New Jersey. You made an eloquent plea, madame, but that bird is already lost to your fair State and the only way to get it back is through captive breeding.

In my massive State of California there are only two nests or aeries, one in northern California and one on the national landmark of Morro Rock by the Pacific. Two years ago on or near Morro Rock some jackass shot the male of the last surviving pair of the peregrine falcons there. This pair had just adopted two captively bred baby falcons. One of those little birds died because the mother had to perform the male role of food gathering. The mother managed to save one fortunately. The verifiable fact is that 100 pairs of captively bred birds have been turned loose in the wild to restock. The breeders of these birds love them. They have agreed to all of the Federal statutes involving reporting. They never will recapture a falcon turned into the wild. Without the National Audubon Society's leadership, without Cornell University, and without their team in Denver, these beautiful creatures are going to become extinct within the next 4 to 10 years.

If ever there was a crazy case of environmentalists in the name of saving something bringing about its death, this is it. Are some of you willing to see every last peregrine in the country die just to get at falconers. I have never seen a more confused last-minute attempt to foolishly kill something in the name of saving it. Those really are the facts folks. I have done extensive research on this issue. So have many others and our excellent staffs of both parties. Why do you think my amendment was a totally unanimous effort.

Mrs. MEYNER. Mr. Chairman, will the gentleman yield?

Mr. LEGGETT. I yield to the gentlewoman from New Jersey.

Mrs. MEYNER. Mr. Chairman, I just want to point out to the gentleman from California that he makes some good points. The point of my argument is that the Endangered Species Act protects all; should protect all animals or winged killers. If we exempt the peregrine falcon on this, they are not going to be protected. The only way they are going to be protected is if they come under this act. Support for this exemption does not come from people that want to protect this bird. It comes from people who for their own selfish reasons want to steal the birds out of the nests in California and sell them. They are worth $5,000 apiece. As I pointed out, because there is so much stealing of the babies, they have had to put electronic devices into the nests of the babies.

Mr. DORNAN. Mr. Chairman, will the gentleman yield?

Mr. LEGGETT. I yield to the gentleman from California.

Mr. DORNAN. Mr. Chairman, I am completely in accord with the gentlewoman's concern over the lovely rosy-breasted pushover and the very exciting midnight thrasher; but madame, these peregrine falcons that are now of such great concern to the gentlewoman from New Jersey are in imminent danger. To save these beautiful creatures it requires special legislation. We are almost beyond the point of no return. Total extinction. They simply must be bred in captivity. Please withdraw your well-meaning but counterproductive amendment.

Mr. DINGELL. I rise in opposition to the amendment. Mr. Chairman, the 1973 statute which I have in my hands permitted falconers and owners of raptors to continue in the possession and the enjoyment of those species. Not since that time has it been lawful to take wild raptors from the wild. That situation remains the same under the bill, which continues to outlaw the taking of wild falcons from the wild.

The function of the changes in the law that would be made by the committee bill are to permit breeders, that is, falconers and persons like that using lawfully held falcons, to engage in the breeding of these falcons for two purposes. One is for a continuation of the sport of falconry. The other is for a return of these populations to the wild. Because of genetics, it is impossible to continue to inbreed between a pair of falcons and have desirable animals; but with the ability to trade these animals back and forth among lawfully held populations whose forebears were taken into captivity before 1973, it is possible to not only continue the populations in captivity in a healthful state, but also to develop populations of falcons which can be returned to the wild.

The cost of this undertaking is large. It runs $5,000 to $10,000 per breeder. It also has afforded the release of over 100 pairs of these falcons, now extinct, in most of the United States to return to the wild.

The amendment, although well intentioned by the gentlewoman from New Jersey, does directly the opposite of the intention which she expresses and that is preservation and enhancement of the species of wild falcon.

Mr. **McKay.** Mr. Chairman, will the gentleman yield?

Mr. **Dingell.** I yield to the gentleman from Utah.

Mr. **McKay.** Mr. Chairman, I agree with the gentlewoman, that unless you have some crossbreeding from other species, you can wipe them out by inbreeding and you get to where they are very vulnerable.

Mr. **Dingell.** That is right.

Mr. **McKay.** The gentleman is absolutely correct. I have had experience with other animals, domesticated and some wild; but let me ask a question. The gentlewoman from New Jersey indicated that they could not tell whether they had been taken from the wild or whether they had been one or two generations bred from the people who had them.

The reason I ask the question, have we any protection or any way to tell, because there is a man in my State who has been breeding these falcons for two or three generations. He wound up being thrown in jail for 18 months because they could not prove whether they had been taken from the wild or not. When somebody makes a charge, how do we accommodate this situation?

Mr. **Dingell.** Mr. Chairman, it is, I would say to the gentleman from Utah (Mr. McKay), enormously difficult to establish whether they have been taken from the wild. It is difficult to tell between two birds whether one came from the wild or not, but there are stern strictures in the law against those who would raise nets.

If we are to continue to support the raising of falcons, if we have a sympathy for these great birds and we desire to have them developed and restored from populations which are released from captive birds into the wild, then we will vote against the amendment offered by the gentlewoman from New Jersey (Mrs. Meyner) and vote for the carefully drawn exemptions in the 1973 act which have been afforded in the committee-passed bill.

Mr. **Forsythe.** Mr. Chairman, will the gentleman yield further?

Mr. **Dingell.** I yield to the gentleman from New Jersey.

Mr. **Forsythe.** Mr. Chairman, I think it is important to know how to differentiate between falcons held legally and those illegally. There are a number of ways, and some are provided in the bill, for example, records, inventory, and documentation. Banding, of course, is an important method that can be used in this kind of thing.

I would add that as much as I regret opposing the amendment offered by the gentlewoman from New Jersey (Mrs. Meyner), I think we are in a situation—and we are definitely in this situation with the falcon, and we are going to be in it with other species—where we will have to find a way to promote private breeding of these species.

So, Mr. Chairman, I hope the amendment will be defeated, and I thank my colleague for yielding.

Mr. **Dornan**. Mr. Chairman, will the gentleman yield?

Mr. **Dingell**. I yield briefly to the gentleman from California.

Mr. **Dornan**. Mr. Chairman, let me state the reason that this amendment was adopted into the body of the language.

Mr. **Dingell**. And it was, as I observed, adopted unanimously by the committee.

Mr. **Dornan**. Yes, unanimously, without any controversy.

The reason was that we had available during those committee hearings the books, along with large color photographs, of the Cornell University operation and the operation in their extension out in Colorado. We saw the letters from the National Aubudon Society pleading this case.

Every single member of our Committee on Merchant Marine and Fisheries, in the subcommittee and in the full committee, agreed with the very reasonable position that if we do not allow the exception in the name of saving the very existence of peregrine falcons, one of the most majestic birds native to our North American Continent, we would drive them into extinction in the name of saving them.

Mr. **Dingell**. Mr. Chairman, the gentleman is correct. The amendment would destroy the possibility of restoring the peregrine falcon to the wild.

Mr. **Jacobs**. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, there are three principal points that I think ought to be cleared up by the committee.

The first is the business of distinguishing the birds in captivity from the birds stolen from the wild. The gentleman from Michigan (Mr. Dingell) just spoke of the peregrine falcon, and indeed I think it would be fair to characterize peregrine falcons as distinguished birds, whether they have been stolen from the wild, whether they have been sold, or whether they have been in captivity. The point is that we cannot tell now for certain.

The question was asked for our colleague, the gentleman from Utah (Mr. McKay), whether there would be a problem. There is no law enforcement problem now because if anybody comes by one, it is presumed he came by it by illegal means, by stealing it, because it is not permitted to be sold now. So the protection is absolute in the law as it is.

The gentleman from Michigan (Mr. Dingell) made the point that these birds need to be traded in order to propagate their kind. This provision does not just sap, "traded." It says, "sold" at $5,000 a copy. Now, I wonder why the provision does not just say, "traded for mating purposes." As a matter of fact, I wonder whether that amendment would not be in order in case the amendment offered by the gentlewoman from New Jersey (Mrs. Meyner) fails.

Let us just say, whether this is to make money or to make love, if it is for the latter purpose, it seems to me it would be sufficient to say these birds can be traded, not sold for 5,000 bucks to make a few dollars.

We just voted on an amendment that determined that the snail darter was not as important as a dam. I happen to have supported that amendment because I believe that is right. I happen to be a strict vegetarian, but I believe in the limits. I believe, when it comes to the human balance, if it is necessary to continue human life, or even necessary to make human life viable, then I think the priorities must be exercised. But here is a case where we are not talking about holding up the dam project. We are just talking about whether this species is going to be exposed to commercialism, whether it is going to be exposed to extinction.

So in sum, I would ask the committee to consider carefully whether it does not want to support the amendment offered by the gentlewoman from New Jersey. And if the committee should reject that, then it seems to me that it would be in order for the committee to entertain an amendment that would do exactly what the gentleman from Michigan says, permit these birds to be traded but not sold at $5,000 to make somebody rich.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from New Jersey (Mrs. Meyner).

The question was taken; and on a division (demanded by Mrs. Meyner) there were—ayes 27, noes 53.

So the amendment was rejected.

Mr. LEGGETT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my understanding that we have been considering this bill now for 4 hours. It is everybody's knowledge that we have to complete this bill before the session ends. We do not want to take all day on it.

Mr. Chairman, I ask unanimous consent that debate on all amendments and on the bill close in 30 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. DUNCAN of Oregon. Mr. Chairman, reserving the right to object, to my knowledge there are at least nine amendments left, all of which I think have probably been printed in the Record. I think the gentleman's objective is laudable. But this is a very important bill, and I do not know that we ought to be forced by the exigences of time to waive reasonable debate on it.

Mr. Chairman, I would suggest the gentleman extend the time at least an hour.

Mr. LEGGETT. Mr. Chairman, I ask unanimous consent that debate on all amendments and on the bill close in 40 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BUCHANAN. Mr. Chairman, reserving the right to object, those of us who have amendments printed in the Record would, of course, be protected by the rules under the scenario?

The CHAIRMAN. Let the Chair state that that is correct, 5 minutes on each side.

Mr. BUCHANAN. I thank the Chair.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. Members standing at time the unanimous-consent agreement was entered into will be recognized for 2½ minutes each.

The Chair recognizes the gentleman from New Jersey (Mr. Hughes).

AMENDMENT OFFERED BY MR. HUGHES

Mr. HUGHES. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Hughes: Page 20, line 19, strike out all of the language from "Any" through "practicable." on line 22.

Mr. HUGHES. Mr. Chairman, I will not take very much time, but on page 20 of the bill there is a provision which says:

> Any action for review under this subsection shall receive preference over other matters before the court and shall be heard and determined as expeditiously as the court considers practicable.

In the full committee I argued against this particular amendment because we should not be telling the court that these particular matters deserve preference over other matters before the court. We have a basic concept called the separation of powers, and I think it should fall to the court to determine the trial schedule for the judicial branch of our Government.

I urge my colleagues to support this amendment to strike this mandate to the courts.

Thank you.

Mr. FORSYTHE. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. Mr. Chairman, we accept the amendment on this side.

Mr. HUGHES. I thank the gentleman.

Mr. LEGGETT. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from California.

Mr. LEGGETT. Mr. Chairman, we have no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. Hughes).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DUNCAN OF OREGON

Mr. DUNCAN of Oregon. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Duncan of Oregon: Page 23, strike out line 15 and all that follows down through line 22, and insert in lieu thereof the following:
>
> "(6) The term 'critical habitat' for a threatened or endangered species means—
>
> "(A) the specific areas within the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (i) which are essential to the conservation of the species and (ii) which require special management consideration or protection; and
>
> "(B) specific areas periodically inhabitated by the species which are outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act (other than any marginal habitat the species may be inhabiting because of pioneering efforts or population stress), upon a determination by the Secretary at the time it is listed that such areas are essential for the conservation of the species.

Mr. DINGELL. Mr. Speaker, I reserve a point of order against the amendment.

The CHAIRMAN. The gentleman from Michigan (Mr. Dingell) reserves a point of order on the amendment.

The gentleman from Oregon is recognized for 2½ minutes.

Mr. Duncan of Oregon. Mr. Chairman, this amendment is printed in the Record. I would like to have 5 minutes.

The Chairman. The gentleman's amendment was printed in the Record, and the gentleman insists, so he may have 5 minutes of time.

Mr. Duncan of Oregon. Mr. Chairman, we have spent a lot of time here this afternoon with specific exemptions from what is deemed by at least a majority of the members of this committee to be unreasonable restrictions imposed upon the activities of man by the rigid requirements of the Endangered Species Act.

The first amendment which I am offering goes to the heart—both amendments do—of the problems which have been raised by this bill. The committee in its report on page 7 recognizes that section 7 of the Endangered Species Act, requiring that Federal agencies insure that none of their actions jeopardize the continued existence of listed species, has developed into the most significant part of the entire statute.

There are two reasons in my judgment why this is so. One is the definition of critical habitat and the other is the definition of species. This first amendment addresses itself to the question of critical habitat.

In the original bill there was no definition of critical habitat at all. In its amendment the committee recognizes the problem and does define critical habitat. There being no definition in the original bill, the Department of the Interior issued a regulation which defined critical habitat for an endangered species as ". . . as any land, air, or water area . . . and constituent elements thereof, the loss of which would appreciably decrease the likelihood of conserving such species"; the committee in an effort to correct the problem changed only the word "appreciably" to the word "significantly". I think they recognized the problem and tried to address it but failed miserably in doing so.

This definition which I offer as a substitute defines critical habitat as the specific areas within the geographical area occupied by the species on which are found those physical or biological features which are essential to the conservation of the species and which require special management. In addition to that I include as critical habitat specific areas periodically inhabited by the species which are outside the geographic area occupied by the species (excluding marginal habitat) upon a determination by the Secretary that such areas are essential for the conservation of the species.

This is a definition of critical habitat. I think that in order to be consistent with the purposes of this bill to preserve critical habitat that there ought to be a showing that it is essential to the conservation of the species and not simply one that would appreciably or significantly decrease the likelihood of conserving it.

I think it goes to the heart of the problem which every Member has felt in his district. It is entirely consistent with good biological practices and furthermore it maintains intact the purpose of this bill, which is to prevent the extinction of species who require this critical habitat.

I think with one broad sweep here in this amendment and with the one that follows we will eliminate many of the problems and still give us an opportunity to preserve these species which none of us wants to become extinct.

The CHAIRMAN. Does the gentleman from Michigan wish to pursue his point of order?

Mr. DINGELL. Mr. Chairman, I am opposed to the amendment but I will not speak on it.

Mr. Chairman, I withdraw my point of order.

The CHAIRMAN. The gentleman from Michigan withdraws his point of order.

The question is on the amendment offered by the gentleman from Oregon (Mr. Duncan).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. DUNCAN OF OREGON

Mr. DUNCAN of Oregon. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Duncan of Oregon: Page 24, strike out line 1, and all that follows down through line 4, and insert in lieu thereof, the following:

"(13) The term 'species' means a group of fish, wildlife, or plants, consisting of physically similar organisms capable of interbreeding but generally incapable of producing fertile offspring through breeding with organisms outside this group.".

Mr. DINGELL. Mr. Chairman, I reserve points of order against the amendment.

The CHAIRMAN. The gentleman from Michigan (Mr. Dingell) reserves points of order against the amendment.

Mr. DUNCAN of Oregon. Mr. Chairman, without repeating the significance of these amendments that I have already discussed in connection with the first amendment to redefine "critical habitat," this one goes to the definition of "species." The committee bill, at the top of page 24, defines the term "species" as including any subspecies of fish or wildlife or plants, and any distinct segment of the population of any species of vertebrate fish or wildlife which interbreeds when mature.

Mr. Chairman, I would replace this with, again, a generally biologically accepted definition of "species," which woud be defined to mean: "A group of fish, wildlife, or plants, consisting of physically similar organisms capable of interbreeding, but generally incapable of producing fertile offspring through breeding with organisms outside of this group."

The legislation before us today is entitled, and I think this is important, "The Endangered Species Act." It is not entitled "An Endangered Subspecies Act," or the "Endangered Variation-of-a-Species Act."

The amendment preserves, again, the integrity of the legislation while sufficiently tightening up the definitions so that we do not afford protection of this legislation, to the detriment of man, to every individual creature on the face of the Earth that might differ in one degree or another from one of its brothers.

Authorities at the Fish and Wildlife Service have estimated that there are approximately 1.4 million full species of animals, 600,000 full species of plants that have been cataloged so far in the world today, and if we get into subspecies then the estimate is that we have from three to five times as many. Approximately 10 percent of these are estimated to get some protection. The cost of even listing one of these is about $3,200 apiece, aside from the damage that it does to man's activities.

I think in the interest of good conservation and in the interest of preserving the endangered species and of avoiding the reaction which we have seen on this floor today to the unreasonable application of this act, a redefinition of the term "species" to limit it to the species, not subspecies or mutations, is essential and I urge adoption of the amendment.

The CHAIRMAN. Does the gentleman from Michigian desire to insist upon his point of order?

Mr. DINGELL. No, I do not, I wish to speak in opposition to the amendment.

The CHAIRMAN. The gentleman from Michigan withdraws his point of order and is recognized for 2½ minutes.

Mr. DINGELL. Mr. Chairman, I observe that this amendment gives too much and too little protection. I would point out that two distinct species may have not only physical similarity so as to fall into the provision but may also produce fertile offspring when crossed, such as the buffalo and a cow. The provisions of the amendment offered by the gentleman from Oregon (Mr. Duncan) would say that if a buffalo and a cow occupy the same physical habitat that because they can produce fertile offspring they are cataloged as the same species. So if the buffalo is really approaching extinction and there are cows occupying the same range, the protections of the statute will not apply to the buffalo.

Obviously it goes beyond the intention of the gentleman and it is an incredibly bad amendment from that standpoint.

More importantly, the definition of species, as it is drawn, is such that it would change its application as to the buffalo as the law would be amended. Today the Secretary can declare the bald eagle in the lower 48 States to be endangered, as he has done, and to say that in Alaska the species is not endangered. Under the amendment offered by the gentleman from Oregon (Mr. Duncan) the Secretary could not say that the bald eagle is endangered in the lower 48 States and is not endangered in Alaska, he would have to either declare it endangered throughout the whole of its range, or not declare it endangered at all. An incredibly bad amendment and, what is more, it is one which is mischievous and which is totally out of conformity with the basic intentions of the language and the law.

Another species which would fall into this vein is the alligator. It would have to be listed as threatened, or endangered and probably the hunting which now goes on under careful supervision over a part of its range would be precluded en toto.

One last thing should be kept in mind in connection with this mischievous amendment, which has not been well thought out and which is offered by a member of the committee who never considered or studied these matters, is the hard fact that it would limit the populations of wild animals which are threatened to very small geographical areas.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I do not yield.

Mr. DUNCAN of Oregon. Mr. Chairman, I rise to a point of order.

Mr. DINGELL. Mr. Chairman, I ask for regular order.

Mr. **Duncan** of Oregon. Mr. Chairman, a point of order.

Mr. **Dingell**. Mr. Chairman, I ask for regular order. I do not yield to the gentleman. He understands the rules.

POINT OF ORDER

Mr. **Duncan** of Oregon. Mr. Chairman, may I state a point of order.

The **Chairman**. The gentleman will state his point of order.

Mr. **Duncan** of Oregon. Mr. Chairman, the point of order is——

Mr. **Dingell**. Mr. Chairman, I do not yield for a point of order.

The **Chairman**. The Chair has stated that the gentleman will state his point of order.

Mr. **Duncan** of Oregon. Mr. Chairman, I have a point of order. The gentleman is addressing himself and his argument to the amendment——

Mr. **Dingell**. Mr. Chairman, I do not yield to the gentleman from Oregon.

Mr. Chairman, I demand the protection of the Chair. This is a frivolous point of order. I do not yield for that purpose. I ask that the gentleman be instructed to take his seat and behave himself.

The **Chairman**. Will the gentleman from Michigan (Mr. Dingell) please recognize that the Chair is trying to conform to the rules.

The gentleman has made a point of order; and of course, the Chair must recognize that point of order.

Mr. **Dingell**. Mr. Chairman, I do not yield for the point of order.

The **Chairman**. The Chair will state that it is not necessary that the gentleman yield for that purpose. The Chair has a right at any time to recognize a Member on a point of order.

The gentleman from Michigan will continue to proceed in order.

Mr. **Dingell**. I am proceeding in order, Mr. Chairman.

The **Chairman**. The gentleman will proceed.

Mr. **Dingell**. Mr. Chairman, the function of this amendment is to constrict the populations of animals subject to protection to remnant populations and to make a mockery and a joke out of the legislation.

Mr. Chairman, this is an incredibly bad amendment, poorly thought out or mischievous in character. It should be rejected.

The **Chairman**. The time of the gentleman from Michigan (Mr. Dingell) has expired.

Does any member of the committee desire to be heard in connection with this matter?

Mr. **Hughes**. Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. Duncan).

The **Chairman**. The Chair will advise the gentleman that he already used his time under the allocation.

Mr. **Hughes**. Mr. Chairman, I had two amendments at the desk.

The **Chairman**. The gentleman has used his time.

The Chair was trying to be fair in recognizing either the chairman or the ranking member, if either desires to comment on the amendment.

PARLIAMENTARY INQUIRY

Mr. **Hughes**. Mr. Chairman, I have a parliamentary inquiry.

The **Chairman**. The gentleman will state his parliamentary inquiry.

Mr. Hughes. Mr. Chairman, did I not have two amendments at the desk?

The Chairman. The Chair will state that the gentleman from New Jersey has already offered one. If he has another amendment which is printed in the Record, then he can be recognized when he offers that amendment. Otherwise, he has used his time.

The Chair is simply attempting to be fair with Members.

The Chair now recognizes the gentleman from Texas (Mr. Kazen).

Mr. Kazen. Mr. Chairman, I just take this very, very brief time to make known to the committee that there is another problem, not only one with the birds we discussed here a while ago, but also with other domestic animals born in captivity. They cannot now be transferred from one place to another without a permit, and those permits are not forthcoming.

As an example, Mr. Chairman, I have a constituent who has a large ranch on which he has these animals which were born in captivity and have been domesticated. If he has five bulls and, say, three cows, and he wants to get rid of two bulls and send them somewhere else where they are needed, he cannot do it.

Actually, that is working against the theory that we want to preserve these species.

Mr. Chairman, I would hope that the committee will look into this and see whether or not in a future amendment this exemption can be placed along with the birds which have been born legally in captivity.

Mr. Duncan of Oregon. Mr. Chairman, will the gentleman yield?

Mr. Kazen. I yield to the gentleman from Oregon.

Mr. Duncan of Oregon. Mr. Chairman, I would just like to say that the zeal and single-mindedness of my friend, the gentleman from Michigan (Mr. Dingell), both constitute a source of my great admiration for him, but also a source of concern when I see his zeal exceeding what I think is prudent and in the national interest.

Most of his argument was directed against the definition of critical habitat which this committee has already accepted. With respect to the preservation of species, this amendment does preserve the gene pool, and that is the objective of the Endangered Species Act.

The Chairman. The time of the gentleman has expired.

The Chair recognizes the gentleman from Vermont (Mr. Jeffords).

Mr. Jeffords. Mr. Chairman, I just want to state that in deference to the committee, who I think under the circumstances has done an outstanding job on this bill, I do not intend to offer my amendment.

The Chairman. The question is on the amendment offered by the gentleman from Oregon (Mr. Duncan).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BUCHANAN

Mr. Buchanan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Buchanan: Page 2, line 15, strike out "invertebrate animal".

Mr. Buchanan. Mr. Chairman, when the proposal that two small fish, mutations of minnowlike fish, in my congressional district be listed was made, we said to the Department of the Interior, this action could result in stopping a half billion dollars' worth of orderly, model development, the loss of thousands of jobs and millions of dollars, and the bankruptcies of businesses. They said, we cannot consider economic impact in this decision.

Our committee has put into this bill a provision that the Secretary is ordered to consider economic impact in the case of invertebrates. However, curiously, vertebrates, which is where the problem has been—the minnow-like fish, the Houston toad, the furry bush lousewort, or plants are not included. I would simply eliminate this double standard and say that always the Secretary must consider economic impact. We do not limit his ability to make a decision; we only say, you shall look at the economic impact, not in just the case of invertebrates, which the committee included; but also those species that have cause much of the trouble: the little fish, the toads, the plants.

I urge adoption of my amendment.

Mr. BROOKS. Mr. Chairman, will the gentleman yield?

Mr. BUCHANAN. I yield to the gentleman from Texas.

Mr. BROOKS. I thank the gentleman for yielding.

I would just like to say briefly that this amendment would make economic impact one of the factors on the projects in the Houston area where there are reputed to be those monstrous Houston toads that they have not located, but only come out at night, and they hunt for them between 4 and 6 o'clock in the morning when they can hear them, but they never have caught them.

It is a foolish sort of thing to think we would stop the commitment of millions of dollars and thousands of jobs and hundreds of homes because of this.

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from Alabama (Mr. Buchanan).

The amendment was agreed to.

AMENDMENTS OFFERED BY MR. M'KAY

Mr. MCKAY. Mr. Chairman, I offer two amendments.

The Clerk read as follows:

Amendments offered by Mr. McKay: Page 31, line 20, strike out "subsection" and insert in lieu thereof "subsections".

Page 32, line 21, strike out the closing quotation marks and the final period.

Page 32, after line 21, insert the following:

"(i) MILITARY ACTIVITIES.—The provisions of this Act shall not apply to any action authorized, funded, or carried out by the Department of Defense, or by the Divisions of Naval Reactors and Military Application of the Department of Energy, as a part of their military functions. For purposes of this subsection, the term 'military functions' means military functions directly related to military preparedness.".

Mr. MCKAY. Mr. Chairman, as chairman of our Subcommittee on Military Construction, as we deal with military matters and the military preparedness of our country, there are things which come up from time to time, and I think this is a serious matter to deal with and, hopefully, we will solve.

Picture this serious, yet very possible set of circumstances. The Department of Defense plans a strategic war game to test the effectiveness of our Armed Forces in dealing with a national emergency. It is 2 years in the planning. Thousands of man-hours have been expended to stage a realistic alert circumstances and thousands of troops are involved. Millions of dollars' worth of material are specially assembled. The results of the exercise will determine in large part the response technique formally adopted by the Department of Defense.

Suddenly everything is put on hold. Planning is halted. Men and equipment are put on a travel freeze and the work of months is scrapped. Why? Because a red-cockaded woodpecker is sighted in the training area. Or because the troop transport through the base brooklet may adversely impact the spawing of a local population of rare minnows, or because a beetle variety inhabits a stand of trees in the training field.

If you think this is far-fetched, just call Eglin Air Force Base. An almost identical situation recently occurred there with an exercise called Bold Eagle. Or check with 15 or 20 army bases or marine camps, as I did. "Sure," you might say, "the President can suspend the operation of the Endangered Species Act in a national emergency." But I am talking about numerous examples which do not arise to a national emergency which nevertheless occur, which cost our country thousands of dollars, and which might conceivably impact on our ability, cumulatively, to respond to a national emergency.

My amendment will permit the defense establishment to conduct those activities which legitimately affect the ability of the Armed Forces to respond where military preparedness is concerned.

Some of you might be concerned that this represents a carte blanche for the military to ignore the ESA. This will not occur. The Defense Department has signed the Skyes agreement with the Department of the Interior which requires them to undertake all possible mitigation effort when a conflict arises on a military base. Additionally, my language is very specific in only permitting the rigid requirements of the act to be waived when an activity occurs which directly affects our military preparedness and defense capabilities.

This would certainly not allow, for instance, an Army-Navy Country Club to be constructed without regard to the constraints of the ESA. But it would permit vital troop maneuvers, equipment testing, and personnel training which directly impact on our military preparedness.

Let me cite some actual cases where commonsense has been circumvented in the name of the Endangered Species Act.

First. Protection of Yuma clapper rail and black clapper rail halted mosquito spraying at the Yuma, Ariz., base, impacting on morale and posing a health hazard to the troops.

Second. Guns cannot be fired near streams at Fort Lewis, Wash., during certain seasons of the year so as to not disturb any fish which might be spawning.

Third. At Fort Stewart, Ga., Fort Gordon, Fort Jackson, Fort McClellan, and Fort Rucker, firing has been restricted during the breeding season of the red-cockaded woodpecker. With that woodpecker restricting so many forts, I wonder why it is listed as endangered in the first place.

Fourth. The presence of the red-cockaded woodpecker and the softshell sea turtle has impeded combat training at Camp Lejeune, N.C.

Fifth. At Vandenberg AFB, Calif., one subspecies of vegetation said to be on the candidate list for endangered species, the "lompoc yerba," was found growing in the tow path for the space shuttle. Rather than transplant the plant, the shuttle was shuttled on a new tow path.

Sixth. At Point Mugu, Calif., construction of a missile magazine was held up because it was to be built in a "lagoon habitat," possibly harboring unidentified endangered species.

What to these examples represent? In and of themselves they may be insignificant. But added together, cumulatively grouped, they have the potential to sometime, somewhere down the road, impact on the ability of this country to respond to a real national crisis.

I do not think the voters back home will take lightly to the thought that we have played loose and light with their possible security because of the three-spined stickleback and the Sacramento anthicid beetle.

I ask the Members support for my amendment.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. Leggett).

Mr. LEGGETT. Mr. Chairman, I rise to use 30 seconds of my time in opposition to the amnedment.

Mr. Chairman, this matter has been thoroughly reviewed by the committee, and we have had the Department of Defense before the committee. Particularly we had Brig. Gen. R. A. Kuci from the U.S. Training Corps. We asked him a question along these lines, and this is what he said:

> In response to your specific inquiry, the Office of the Secretary of Defense has received no official military complaints that the Act has either restricted training or otherwise had a deleterious effect on military operations. We have been able to accommodate the Act without adversely impacting on our effectiveness.

Mr. Chairman, he went on to indicate they are not for any amendments, and they do not favor this amendment.

The CHAIRMAN. The Chair will inquire if the gentleman from Michigan (Mr. Dingell) desires to take a part of his allowable time in opposition to the amendment. As the Chair understands it, 5 minutes is allowed in support of the amendment, and 5 minutes is allowed to the committee if there is a desire on its part to oppose the amendment. The Chair is trying to protect the rights of the committee.

Mr. DINGELL. Mr. Chairman, I would like to use that 5 minutes, and I seek recognition for that purpose.

The CHAIRMAN. The gentleman from Michigan (Mr. Dingell) is recognized.

Mr. DINGELL. Mr. Chairman, as just read by the chairman of the subcommittee, we had the Department of Defense before the subcommittee. An inquiry was directed to them as to whether in any of the undertakings of the Department of Defense that Agency felt it was inhibited in conducting operations in national defense by reason of the provisions of the Endangered Species Act. That Agency said that it did not find itself inhibited in carrying out its missions by reason of the Endangered Species Act.

Mr. Chairman, there is no example of a military function having been hindered by the application of the Endangered Species Act. The exemption process established by the bill will be workable for the military as well as for the nonmilitary, and no special exemption process, certainly not a flat, unqualified exemption of the type listed here, is needed for handling military matters.

The term "military function" and the term "military performance" are ambiguous and imprecise. When I was in the Army 30 years ago, as a part of our military preparedness program I built a swimming pool and a group of tennis courts. I built a swimming pool and tennis courts as a part of our military preparedness undertaking.

Moreover I think it is quite plain that the Secretary of the Army or any base commander or anybody else can decide what these words mean.

Mr. Chairman, this is a very nice sounding amendment. It can swathe itself very comfortably in the words, "national defense" and "national preparedness," but in point of fact it sanctifies a great amount of rascality, mischief, and disregard of endangered species.

I would further point out that the term, "military function," even though limited by the term itself to meaning military functions as directly related to military preparedness, is also a weasel word, subject by definition to those who wish to disregard the requirements of this statute, which are the protection of species from being wiped from the face of the Earth.

I ask my colleagues to remember that in the last hundred years we have wiped out nearly 2,000 species of animals, hundreds of species of fish, and a large number of species of birds.

I would hope that this kind of an amendment, which is poorly thought out, written on the floor without any study, and full of weasel words, would be rejected.

If the gentleman from Utah (Mr. McKay) desires to bring before the committee a bill which would relate to this matter and give an opportunity to us to consider it, I would be delighted to ask that we hold hearings, and I am sure the chairman of our committee would see that such occurred. In the meantime, the House should reject this amendment, which is offered by a well-meaning Member of the House, one for whom I have great respect, I assure the gentleman, but one who has not considered this matter adequately.

Mr. McKay. Mr. Chairman, will the gentlemen yield?

Mr. Dingell. Now, Mr. Chairman, to that well-meaning Member who does not understand what he does, I am delighted to yield.

Mr. McKay. Mr. Chairman, with all those congratulatory words, I am sure that I ought to win this amendment.

Let me ask the gentleman, have there not been a number of species, regardless of man's actions, that die and disappear every year? But we cannot slow down what nature does.

Mr. Dingell. But this mischievous amendment does not accomplish that end.

Mr. McKay. Mr. Chairman, will the gentleman yield further?

Mr. Dingell. I yield to the gentleman. The gentleman is making a bad case for a bad amendment.

Mr. McKay. That is the gentleman's interpretation. The reason the military testified as they have is because they do not dare do otherwise.

Mr. Dingell. We want them to tell the truth. They do not always choose to. Or else they will tell us one thing and turn around and tell the gentleman something else.

Mr. McKay. Dr. Ron Thomas, who was connected with the environmental control for the military, says that is not true, they would speak up if they dared. They do not because the administration will not let them.

Mr. Dingell. We have offered them the opportunity to be heard. The gentleman does not want to tell me that somebody would come before the committee and not tell the truth?

Mr. McKay. Of course. The gentleman knows that, as well as I do.

Mr. Dingell. I do not happen to know that. Maybe the gentleman does, but I do not.

The Chairman. The question is on the amendments offered by the gentleman from Utah (Mr. McKay).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. M'KAY

Mr. McKay. Mr. Chairman, I offer an amendment.

The Chairman. The Chair will ask the gentlman from Utah whether this amendment has been printed in the Record.

Mr. McKay. Yes, Mr. Chairman.

The clerk read as follows:

Amendment offered by Mr. McKay: Page 19, strike out line 5 and all that follows down through line 22 on page 20 and insert in lieu thereof the following:

"(h) Judicial Review.—Any real party in interest or the Federal agency involved may obtain review, under chapter 7 of title 5 of the United States Code, of—

"(1) any decision (including any decision with respect to mitigation measures) made by a review board under subsection (d) which is not disapproved by the Endangered Species Committee under subsection (e), and

"(2) any decision by the Endangered Species Committee to disapprove a decision of a review board under subsection (e), in the United States court of appeals for any circuit wherein the agency action concerned will be, or is being carried out, by filing a written petition for review in such court within 90 days after the last date on which the Committee may disapprove the review board's decision if it fails to disapprove such decision, as the case may be. Attorneys designated by the review board or the Committee may appear for, and represent the board or Committee, respectively, in, any action for review under this paragraph.

Page 20, line 23, strike out "(j)" and insert in lieu thereof "(i)".
Page 21, line 2, strike out "(f)" and in lieu thereof "(d) (6)".
Page 21, line 11, insert "review boards and" and "section".
Page 21, line 13, strike out "(k)" and insert in lieu thereof "(j)".
Page 21, line 14, insert "a review board or by" after "by".
Page 22, line 3, strike out "(l)" and insert in lieu thereof "(k)".
Page 22, beginning on line 5, strike out "subsections (d), (e), and (f) of".

Mr. McKay [during the reading]. Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The Chairman. Is there objection to the request of the gentleman from Utah?

There was no objection.

Mr. McKay. Mr. Chairman, I offer an amendment which will remove judicial review to the circuit court of appeals of the district wherein the particular project exists which has become the subject of an exemption challenge under the Endangered Species Act.

Under the provisions of the committee bill, an interested party is required to challenge a decision regarding an exemption in the Federal district court. Because of the incredible backlog of cases which exist at virtually every district court in the United States, the requirement to begin at the district court level is both time-consuming and expensive. It has, in the past, and in all likelihood will continue to be in the future, a dilitory technique by the party most interested in delay, to delay review and postpone decisions.

By requiring that all challenges to exemption or nonexemption issues be instituted at the circuit court of appeals, thousands of dollars and months—perhaps even years—of unnecessary lower court review will be avoided. I say unnecessary lower court review because virtually every exemption or nonexemption issue will undoubtedly be appealed, in any event, to the circuit court.

There is ample precedent for original jurisdiction being vested in the circuit court of appeals in programs of this nature. The Federal Water Pollution Control Act vests similar authority on the circuit court of appeals and I understand that the procedure has worked remarkably well. It has provided a mechanism whereby speedy review has been obtained by a competent and impartial battery of qualified appellate judges at considerable cost savings to all litigating parties.

It is impossible to say how many years of litigation will be saved by this amendment, but it is certain that the resources of all potential litigants will be better utilized in good and positive ways, rather than being committed to storming the walls of the district courts.

Another aspect of the amendment is to provide that the judicial review occur at the circuit court of appeals "wherein the agency action concerned will be, or is being carried out." This means that if an exemption is granted in Utah, the 10th circuit in Denver will hear the case. If a decision is challenged in Honolulu, the ninth circuit court in San Francisco will hear the case. This will eliminate improper "forum-shopping" by clever attorneys who desire an unfair advantage by filing in the circuit where they are confident of a more sympathetic judge. It will also save attorneys, witnesses, and interested parties from having to travel in some cases, thousands of miles to an unfamiliar area and an unfamiliar court to argue a case before a circuit which has no experience with the issues involved.

I want to point out again, and emphasize that competent judicial review can occur at immense savings without sacrificing any rights, interests, or issues. It is conservatively estimated that 2 to 3 years of expensive litigation will be eliminated for every challenge brought under the amended act. It just makes commonsense to provide a mechanism whereby the important decisions of the Endangered Species Committee can be quickly reviewed without sacrificing the interests of any party.

My amendment does that and I urge my colleagues to support the concept of judicial review by the circuit courts.

Mr. LEGGETT. Mr. Chairman, will the gentleman yield?

Mr. McKAY. I yield to the gentleman from California.

Mr. LEGGETT. Mr. Chairman, we accept the amendment on our side.

Mr. McKAY. I thank the gentleman.

Mr. FORSYTHE. Mr. Chairman, will the gentleman yield?

Mr. McKAY. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. Mr. Chairman, we accept the amendment.

Mr. McKAY. I thank the gentleman.

The Chairman. The question is on the amendment offered by the gentleman from Utah (Mr. McKay).

The amendment was agreed to.

The Chairman. The Chair recognizes the gentleman from New York (Mr. Weiss).

Mr. Weiss. Mr. Chairman, it was with some reluctance that I intended to support the reauthorization of the Endangered Species Act as reported by the Merchant Marine Committee. While the bill (H.R. 14104) did not afford the degree of protection for threatened species provided in the original 1973 legislation, it did seem to me to be the best possible measure available at this time.

This compromise legislation contains the minimal acceptable safeprocess for a project's exemption from the provisions contained in the original act. It mandates a thorough review of a Federal agency's effort to comply with the protection stipulations of the act. It also requires a Federal agency to undertake a "biological assessment" for endangered species at a site before a project can be initiated .

If a project is ultimately exempted from the act's requirements, the agency must develop "mitigation and enhancement procedures" for the endangered species. The bill would also require the Secretary of the Interior to formulate "recovery plans" for the revival and conservation of an endangered species.

These safeguards seemed to me to be sufficiently stringent to prevent wanton extinction of an endangered species. While the compromise legislation did not offer the certainty of protection provided in the original act, it did largely fulfill the aims of that most commendable measure.

Passage of the Endangered Species Act in 1973 was one of the major achievements of the 93d Congress. Enactment of that law demonstrated Congress' commitment to preserving the delicate and vulnerable ecological balance. The 95th Congress has an obligation to reaffirm that commitment and to renew this environmentally essential legislation.

Our ecosystem maintains a remarkable diversity of species. Each of these—whether it be the grizzly bear, the whooping crane and, yes, the snail darter—is an irreplaceable link in the biological chain of evolution. We are part of that chain and we are inextricably linked to every other species. Extinction of one is a threat to all. We should have moved to protect this fragile and unique chain by passing the bill as it was reported to us today.

Mr. Chairman, when this measure was brought to us earlier today, and when the discussion started last night, we were assured that a compromise had been worked out between all contending parties so that this measure could be adopted, as a temporary expedient and then we would have a GAO study that would provide the basis for longer lasting consideration. On the basis of what has happened on this floor this afternoon, especially in light of the last amendment that was adopted, which provides such a broad exemption for military activities—and what the gentleman from Michigan (Mr. Dingell) said about it is quite true—I do not believe it is possible for any of us who are concerned about the basic legislation to support the bill in the form that it is in right now.

So, it seems to me that the opponents of this act who started out pretending that they were bound by some kind of compromise agreement have so overreached themselves that in good faith those of us who felt bound to support the compromise from an environmental point of view can no longer do so.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. Jacobs).

AMENDMENT OFFERED BY MR. JACOBS

Mr. JACOBS. Mr. Chairman, I offer an amendment.

The Clerk read as follows.

Amendment offered by Mr. Jacobs: After last section insert a new section as follows:

"Nothing in this Act shall permit the sale of peregrine falcons; but such falcons may be traded for other such falcons without requirement of Interior Department permit for mating purposes.

The CHAIRMAN. The Chair will inquire of the gentleman from Indiana, has this amendment been printed in the Record?

Mr. JACOBS. No, Mr. Chairman.

The CHAIRMAN. The gentleman from Indiana will be recognized for 1½ minutes.

Mr. JACOBS. Obviously, Mr. Chairman, this amendment does nothing more than what I suggested earlier. It takes the profit out of the propagation of these birds. I hope that the committee will recognize the purpose, the announced purpose of the provision of the bill, can be accomplished by allowing this trade without obtaining a permit from the Interior Department.

Mr. Chairman, I would like to further say that the gentleman from Michigan a few moments ago asked if he could have the protection of the Chair, and since he approached me after he made that original talk in the well and yelled at me and used abusive language, perhaps I should have the protection of the Chair. But, I do not think I need it. I might add that somebody around here is about to be an endangered species if he comes up to me that way again without his pistol.

Mr. Chairman, I yield back the balance of my time.

Mr. FORSYTHE. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Indiana.

Mr. Chairman, this amendment, I think is truly counterproductive. I do not think it really will accomplish the purposes of the basic provision. Furthermore, it has never been substantiated that the price for these birds is in this $5,000 area. It is more like $500, so I hope the amendment will be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. Jacobs).

Mr. JACOBS. Mr. Chairman, on that I demand a division.

Mr. ASHBROOK. Mr. Chairman, I demand a recorded vote, and pending that I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Mr. ASHBROOK. Mr. Chairman, I ask unanimous consent to withdraw my point of order of no quorum and to withdraw my request for a recorded vote.

The CHAIRMAN. The gentleman withdraws his point of order and his request.

Does the gentleman from Indiana still demand a division?

Mr. Jacobs. I do, Mr. Chairman.

The question was taken, and on a division (demanded by Mr. Jacobs) there were—ayes 22; noes 30.

So the amendment was rejected.

Mr. Latta. Mr. Chairman, I make a point of order, a quorum is not present and I object to the vote on the ground that a quorum is not present.

The Chairman. That is not in order in the committee.

In order to conclude the debate, the gentleman from California has 1 minute, at the conclusion of which all time on this bill will have expired. Does the genteman from California (Mr. Leggett) wish to use that time?

PARLIAMENTARY INQUIRY

Mr. Buchanan. Mr. Chairman, I have two other amendments which were printed in the Record. I wanted to call that to the attention of the Chair.

The Chairman. The gentleman from Alabama, of course, will be protected on those amendments printed in the Record.

All other time has expired.

AMENDMENT OFFERED BY MR. BUCHANAN

Mr. Buchanan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Buchanan: Page 14, beginning on line 17, strike out "and enhancement".

Page 18, beginning on line 8, strike out "and enhancement".

Page 19, line 9, strike out "and enhancement".

Page 19, line 12, strike out "and enhancement".

Page 19, line 16, strike out "and enhancement".

Page 20, beginning on line 3, strike out "and enhancement".

Page 20, beginning on line 5, strike out "and enhancement".

Mr. Leggett. Mr. Chairman, if the gentleman will yield, the committee is knowledgeable of the gentleman's amendment. At this point we can accept the gentleman's amendment.

The Chairman. Without objection, the amendment will be agreed to.

Mr. Leggett. Mr. Chairman, if the Chair will allow me, I have some understanding with my colleagues and I have to withdraw my consent.

The Chairman. The gentleman from Alabama is entitled to his 5 minutes.

Mr. Buchanan. Mr. Chairman, as I noted in my opening statement, this amendment is purely technical in nature and is designed to perfect the language of the bill. H.R. 14104 contains a provision which requires any Federal agency receiving a section 7 exemption to conduct such "mitigation and enhancement" measures as are necessary and appropriate to minimize the adverse effects of the agency action on the species in question. I do not quarrel with the merits of this section, but question the wisdom of using the words "mitigation and enhancement" in the same phrase.

The American Heritage Dictionary of the English language defines the word "enhance" to mean to "increase or make greater, as in value, cost, beauty, or reputation." The word "mitigate" is defined to mean "to moderate in force or intensity." In section 7(c)(2) of the committee bill, "mitigation and enhancement" measures are stated to be actions by the agency which are necessary and appropriate "to minimize the adverse effects of the agency action" on the species or habitat in question.

I believe the word "mitigate" is sufficient to accomplish the purpose of this section as explained in the bill. Furthermore, I question the wisdom of adding to this section such an unclear word as "enhancement" which could be the focus of litigation to determine how much the agency would be required to increase or make greater the species or its habitat. Therefore, I hope my colleagues will support this amendment.

Mr. **Gary A. Myers**. Mr. Chairman, if the gentleman will yield, I do not want to speak for or against the amendment, but I would like to comment on the bill.

It should be pointed out that this bill deals only with those projects that are federally related or federally licensed. I think one of the disappointments that might occur after this bill is passed is that some private projects of significant size may not have any improved benefit under this bill. I would ask the next Congress to consider the fact that there may be some private projects that would need protection under provisions similar to this bill.

Mr. **Buchanan**. I appreciate the gentleman's vision. I would say in my own area some of the problems are in the private developments. However there are provisions in this bill that at least in part meet those problems, although not entirely.

I thank the gentleman from Pennsylvania.

Mr. Chairman, I ask for the adoption of the amendment.

Mr. **Forsythe**. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Alabama (Mr. Buchanan).

Mr. Chairman, the phrase "reasonable mitigation and enhancement measures" is used in several places in H.R. 14104 to describe things a successful applicant for an exemption might be required to do as a condition of getting the exemption. The required actions would have to be reasonable with regard to things such as their cost, likelihood of protecting the listed species, and the availability of the technology required to make them effective.

Section 7(f)(2) of the bill makes it clear that "mitigation and enhancement measures" is a phrase which denotes those actions which must be taken by a successful exemption applicant because they are necessary and appropriate "to minimize the adverse effects of the agency action" on the species or habitat in question. Live propagation, transplantation, and habitat acquisition and improvement are mentioned is specific examples of activities which might be required in response to the adverse effects of a particular exempted agency action.

The **Chairman**. The question is on the amendment offered by the gentleman from Alabama (Mr. Buchanan).

The amendment was rejected.

The **Chairman**. Are there further amendments? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Natcher) having assumed the chair, Mr. Sisk, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 14104) to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes, pursuant to House Resolution 1423, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

Mr. HUGHES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 384, nays 12, answered "present" 1, not voting 33, as follows:

[Roll No. 921]

YEAS—384

Abdnor
Addabbo
Akaka
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Ashley
Aspin
AuCoin
Bafalis
Baldus
Barnard
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Benjamin
Bennett
Bevill
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Butler
Caputo
Carr
Carter
Cavanaugh
Cederberg
Chisholm
Clausen, Don H.
Clawson, Del.
Clay
Cleveland
Cochran
Coleman
Collins, Ill.
Collins, Tex.
Conable
Conte
Corcoran
Corman
Cornell
Cornwell
Cotter
Coughlin
Crane
Cunningham
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Davis
de la Garza
Delaney
Dent
Derrick
Derwinski
Devine
Dicks
Dingell
Dodd
Dornan
Downey
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Eckhardt
Edgar

YEAS—Continued

Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Eilberg
Emery
English
Erlenborn
Ertel
Evans, Colo.
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flippo
Flood
Florio
Flowers
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Fraser
Frenzel
Fuqua
Gammage
Gaydos
Gephardt
Giaimo
Gibbons
Gilman
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Grassley
Green
Gudger
Guyer
Hagedorn
Hall
Hamilton
Hammerschmidt
Hanley
Hannaford
Hansen
Harkin
Harrington
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Holland
Hollenbeck
Holt
Horton
Howard
Hubbard
Huckaby
Hughes
Hyde
Ireland
Jeffords
Jenkins
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Jordan
Kasten
Kastenmeier
Kazen
Kelly
Kemp
Keys
Kildee
Kindness
Kostmayer
Krebs
Krueger
LaFalce
Lagomarsino
Latta
Leach
Lederer
Leggett
Lent
Levitas
Livingston
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Luken
Lundine
McClory
McCloskey
McCormack
McDade
McDonald
McEwen
McHugh
McKay
McKinney
Madigan
Maguire
Mahon
Mann
Markey
Marks
Marriott
Martin
Mathis
Mattox
Mazzoli
Meeds
Meyner
Michel
Mikulski
Milford
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Gary
Myers, John
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
O'Brien
Oakar
Oberstar
Obey
Ottinger
Panetta
Patten
Patterson
Pattison
Pease
Pepper
Perkins
Pickle
Pike
Poage
Pressler
Preyer
Price
Pritchard
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Regula
Reuss
Rhodes
Richmond

YEAS—Continued

Rinaldo
Roberts
Robinson
Rodino
Roe
Rogers
Roncalio
Rooney
Rose
Rosenthal
Rostenkowski
Rousselot
Roybal
Runnels
Ruppe
Russo
Ryan
Santini
Sarasin
Satterfield
Sawyer
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shuster
Sikes
Sisk
Skelton
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spellman
Spence
St Germain
Staggers
Stangeland
Stanton
Steed
Steers
Steiger
Stockman
Stokes
Stratton
Studds
Stump
Symms
Taylor
Thompson
Thone
Thornton
Traxler
Treen
Trible
Tsongas
Tucker
Udall
Ullman
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Waggonner
Walgren
Walker
Walsh
Wampler
Watkins
Waxman
Weaver
Whalen
White
Whitehurst
Whitley
Whitten
Wiggins
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Young, Tex.
Zablocki
Zeferetti

NAYS—12

Ashbrook
Beilenson
Bonior
Burton, John
Burton, Phillip
Conyers
Dellums
Holtzman
Miller, Calif.
Simon
Stark
Weiss

ANSWERED "PRESENT"—1

Jacobs

NOT VOTING—33

Ammerman
Applegate
Armstrong
Badham
Biaggi
Burke, Calif.
Burke, Fla.
Carney
Chappell
Cohen
Dickinson
Diggs
Flynt
Frey
Garcia
Ichord
Jenrette
LeFante
Lehman
Lujan
McFall
Marlenee
Mikva
Moss
Myers, Michael
Pettis
Quie
Risenhoover
Rudd
Shipley
Skubitz
Teague
Wilson, C. H.

The Clerk announced the following pairs:

Mr. Biaggi with Mr. Michael O. Myers.
Mr. Jenrette with Mr. Quie.
Mr. Garcia with Mr. Rudd.
Mr. Flynt with Mr. Marlenee.
Mr. Mikva with Mr. Skubitz.

Mr. Chappell with Mr. Lujan.
Mr. Carney with Mr. Frey.
Mrs. Burke of California with Mr. Cohen.
Mr. Applegate with Mr. Badham.
Mr. LeFante with Mr. Dickinson.
Mr. Ichord with Mr. Burke of Florida.
Mr. McFall with Mr. Teague.
Mr. Charles H. Wilson of California with Mr. Risenhoover.
Mr. Ammerman with Mr. Lehman.
Mr. Diggs with Mr. Moss.
Mr. Shipley with Mr. Armstrong.

Mrs. Fenwick and Mr. Pursell changed their vote from "nay" to "yea."

Ms. Holtzman, Mr. Dellums, and Mr. Stark changed their vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

[From the Congressional Record, Oct. 14, 1978]

HOUSE CONSIDERATION AND PASSAGE OF S. 2899, WITH AMENDMENT, IN LIEU OF H.R. 14104

Mr. MURPHY of New York. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such action, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate bill as follows:

S. 2899

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

SEC. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(1) by inserting after paragraph (4) thereof the following new paragraphs:

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

"(6) The term 'critical habitat' for a threatened or endangered species means:

"(A) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) which requires special management consideration or protection;

"(B) critical habitat for a threatened or endangered species may include specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, into which the species can be expected to expand naturally upon a determination by the Secretary at the time it is listed, that such areas are essential for the conservation of the species;

"(C) critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraphs (A) and (B) of this paragraph; and

"(D) except in those circumstances determined by the Secretary, critical habitat will not include the entire geographical area which can be occupied by the threatened or endangered species.";

(2) by inserting after paragraph (7) thereof the following new paragraphs:

"(8) The term 'irresolvable conflict' means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, after consultation as required in section 7(a) of this Act, completion of such action would (A) jeopardize the continued existence of an endangered or threatened species, or (B) result in the adverse modification or destruction of a critical habitat.

"(9) For purposes of subsection 7(e)(2)(C) the term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction"; and

(3) by renumbering the paragraphs thereof, including any references thereto, as paragraphs (1) through (20), respectively.

SEC. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secreary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall insure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary after consultation as appropriate with the affected States, to be critical, unless such agency is granted an exemption for such action by the Committee pursuant to subsection (e) of this section.

"(b)(1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall review any application submitted to it pursuant to subsection (d) of this section and determine in accordance with subsection (e) of this section whether or not to grant an exemption from the requirements of subsection (a) of this section for the action set forth in such application.

"(3) The Committee shall be composed of seven members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Chairman of the Council on Environmental Quality.

"(D) The Administrator of the Environmental Protection Agency.

"(E) The Secretary of the Interior.

"(F) The Administrator of the National Oceanic and Atmospheric Administration.

"(G) The Governor of the State which is affected by the action for which an exemption is sought (or in the case of an action affecting more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee as determined among such Governors).

"(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

"(B) While away from their homes or regular places of business in the performance of services for the Committee, mmbers of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

"(B) The Committee shall not grant any exemption from the requirements of subsection (a) of this section to the head of any Federal agency for any action authorized, funded, or carried out by such agency unless five members of the Committee vote to grant such exemption.

"(D) The Committee shall meet at the call of the Chairman or five of its members.

"(E) All meetings and records of the Committee shall be open to the public.

"(6) The Committee may appoint and fix the pay of such personnel as it deems desirable.

"(7) The staff of the Committee may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Service pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

"(8) The Committee may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

"(9) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

"(10)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

"(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

"(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

"(D) The Committee may use the United States mails in the same manner and upon the same conditions as other Federal agencies.

"(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

"(11) In carry out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

"(12) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(13) To the extent practicable within the time required for action under subsection (e) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under subsection (e) of this section shall be in accordance with sections 554, 555, and 556 of title 5, United States Code.

"(14) Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption, any application made to it, if the Secretary of State, after a review of the proposed Federal action and its potential implications, and after hearing, certifies, in writing, to the Committee within sixty days of any submission made under subsection (d)(1) of this section, that the granting of any such exemption and the carrying out of such proposed action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State, at the time of such certification, publish a copy thereof in the Federal Register.

"(15) Except in the case of a member designated pursuant to paragraph (3)(G) of this subsection, no member shall designate any person to serve as his or her representative unless that person is, at the time of such designation, holding a Federal office the appointment to which is subject to the advice and consent of the United States Senate. In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

"(16) Notwithstanding any other provision of this Act, in any case in which the National Security Council determines that the failure of the Committee to grant an exemption from the requirement of subsection (a) of this section to the head of a Federal agency in connection with any Federal action involving a critical military installation would have an adverse effect on the security of the United States, the National Security Council is authorized to notify the Committee, in writing, and upon the receipt of such notice the Committee shall give immediate consideration to such determination.

"(c) REGULATIONS.—Not later than ninety days after the date of enactment of this section, the Committee shall promulgate regulations which set forth the form and manner in which applications by the heads of the Federal agencies for review of actions by such agencies shall be submitted to the Committee and the information to be contained in such applications. Such regulations shall require that information submitted in an applicaion by the head of any Federal agency with respect to any action of such agency include, but not be limited to—

"(1) a description of the consultation process carried out pursuant to subsection (a) of this section between the head of such Federal agency and the Secretary of the Interior, acting through the Director of the United States Fish and Widllife Service; and

"(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) of this section.

"(d) SUBMISSION OF APPLICATIONS.—(1) The head of any Federal agency may submit an application for review of any action of such agency to the Committee if, in the opinion of the head of such agency, such agency has complied with the requirements of subsection (a) of this section and that an irresolvable conflict exists with respect to such action. Such application for review shall be submitted in accordance with the regulations promulgated by the Committee under subsection (c) of this section.

"(2) The Director of the Fish and Wildlife Service (or where appropriate the Administrator of the National Oceanic and Atmospheric Administration) shall prepare and submit to the Committee within thirty days of any submission made under paragraph (1) of this subsection his comments concerning such submission.

"(e)(1) REVIEW AND DETERMINATION.—After the Committee receives the application and comments submitted pursuant to subsection (d) of this section, the Committee shall review such application and comments and—

"(A) determine, with respect to the action which is the subject of such application, whether or not—

"(i) the requirements of the consultation process described in subsection (a) of this section have been met; and

"(ii) there has been a reasonable and responsible effort to resolve the conflicts which are known to exist, and the Federal agency requesting such exemption has made, subsequent to the initiation of the consultation under subsection (a) of this section, no irreversible or irretrievable commitment of resources which forecloses the consideration of modification or alternatives to such action; and

"(iii) an irresolvable conflict exists; and

"(B) if it makes positive determinations under clauses (i), (ii), and (iii) of subparagraph (A), determine and publish in the Federal Register, within one hundred and eighty days after receipt of the application and response required in subsection (d) of this section and after notice and public hearing on the record, whether or not to grant an exemption from the requirements of subsection (a) of this section to the head of such Federal agency for such action.

"(2) The Committee may only grant an exemption for any action under subsection (e) of this section if it determines on the record that—

"(A) there is no reasonable and prudent alternative to such action; and

"(B) the action is of national or regional significance; and

"(C) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest.

"(f) National Environmental Policy Act.—No final determination of the Committee under subsection (e) of this section shall be considered a major Federal action under the terms of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered and threatened species or their critical habitat shall have previously been prepared with respect to any Federal action exempted from the requirements of subsection (e) of this section by such final determination of the Committee.

"(g) Mitigation.—In those instances where the Committee determines that an exception is warranted under subsection (e) of this section the Committee must assure that the action approved for such exemption incorporates all reasonable mitigation measures deemed necessary by the Secretary to minimize adverse impacts upon the affected endangered or threatened species or its critical habitat including but not limited to live propagation, transplantation, and habitat acquisition and improvement. The Federal agency or department receiving such exemption shall include the costs of such mitigation measures within the overall costs of continuing the proposed action.

"(h) Notice.—The sixty-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (e) of this section granting an exemption from the requirements of subsection (a) of this section.

"(i) Exception on Taking.—Notwithstanding sections 4(d) and 9(a) of this Act or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (e) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

"(j) Exemptions in Presidentially Declared Disaster Areas.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (e)(2) and (g) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974 or for any authorized Federal project, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to mitigate the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section; the Committee shall accept the determinations of the President under this subsection.

"(k) Authorization.—There is authorized to be appropriated to carry out this section not to exceed $750,000 for fiscal year 1979, not to exceed $750,000 for fiscal year 1980, and not to exceed $750,000 for fiscal year 1981. The Chairman of the Committee shall furnish a report to the Congress at the end of fiscal year 1979. The report shall speak to the adequacy of the budget authority contained in this subsection.

"(l) The authority granted to the Endangered Species Committee established in this section shall terminate on September 30, 1981.".

Sec. 4. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)" and by adding the following new paragraph:

"(2) The provisions of this section shall not apply to any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978, or the domestic captive produced progeny of any legally held raptor: *Provided*, That such raptor has not been intentionally returned to a wild state. Persons holding such raptors must be able to demonstrate that the raptors do, in fact, qualify under the provisions of this paragraph. Such persons shall maintain and submit to the Secretary on request such inventories, documentation, and records as are reasonable and as the Secretary may by regulation require: *Provided*, That such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

Sec. 5. The third sentence of section 11(a)(1) is amended by inserting the word "knowingly" after the word "otherwise".

Sec. 6. Section 11(a) is amended by adding a new subsection at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.".

SEC. 7. Section 11(b) is amended by adding a new subsection at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to persecution if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.".

SEC. 8. Section 15 of the Endangered Species Act of 1975 (16 U.S.C. 1542) is amended to read as follows:

"Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 9. (a) Section 16(c) of the Endangered Species Act of 1953 (16 U.S.C. 1535(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by striking out "subsection" in the matter preceding subparagraphs (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph" in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (1) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

"(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purposes of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.".

(b) Paragraph (16) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (formerly paragraph (13) and redesignated paragraph (16) by section 2 of this Act) is amended by striking out "fish or wildlife" and inserting in lieu thereof "fish, wildlife, or plant".

Sec. 10. Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding a new subsection as follows:

"(3) Critical habitat of an endangered or threatened species shall be designated concurrently with determination of that species' status except in those cases when—

"(A) an emergency exists because no critical habitat information is available or there or other contingencies;

"(B) there are species listed before enactment of the Endangered Species Act of 1973.".

Sec. 11. Section 4(f)(2)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding a new paragraph (ii) as follows, and renumbering as appropriate:

"(ii) the Secretary shall offer for publication in appropriate scientific journals the substance of the Federal Register notice referred to in (i) above; and".

Sec. 12. Section 3(4) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (4)) is amended as follows: strike the words, "a significant portion", and insert "the essential portion"

Sec 13. Section 3(15) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (15)) is amended as follows: strike the words, "significant portion", and insert "the essential portion".

MOTION OFFERED BY MR. MURPHY OF NEW YORK

Mr. Murphy of New York. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Murphy of New York moves to strike out all after the enacting clause of S. 2899 and insert in lieu thereof the provisions of HR. 14104, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 through fiscal year 1981, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 14104) was laid on the table.

95th CONGRESS
2d Session

S. 2899

IN THE SENATE OF THE UNITED STATES

April 12 (legislative day, February 6), 1978

Mr. Culver (for himself, and Mr. Baker, Mr. Randolph, Mr. Wallop, Mr. Gravel, and Mr. Hodges) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committtee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such actions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangerd Species Act Amendments of 1978".

Sec. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended—

(1) by inserting after paragraph (4) thereof the following new paragraph:

II

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.";

(2) by inserting after paragraph (7) thereof the following new paragraph:

"(8) The term 'irresolvable conflict' means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which completion of such action would (A) jeopardize the continued existence of an endangerd or threatened species, or (B) result in the destruction of a critical habitat."; and

(3) by renumbering the paragraphs thereof, including any references thereto, as paragraphs (1) through (18), respectively.

SEC. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall insure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary as appropriate with the affected States, to be critical, unless such agency is granted an exemption for such action by the Committee pursuant to subsection (e) of this section.

"(b) (1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall review any application submitted to it pursuant to subsection (d) of this section and determine in accordance with subsection (e) of this section whether or not to grant an exemption from the requirements of subsection (a) of this section for the action set forth in such application.

"(3) The Committee shall be composed of seven members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Chairman of the Council on Environmental Quality.

"(D) The Administrator of the Environmental Protection Agency.

"(E) The Secretary of the Interior.

"(F) The Secretary of the Smithsonian Institution.

"(G) The Secretary of Transportation.

"(4) (A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

"(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5) (A) Except as provided in subparagraph (B) of this paragraph, five members of the Committee shall constitute a quorum for the transaction of any function of the Committee.

"(B) The Committee shall not grant any exemption from the requirements of subsection (a) of this section to the head of any Federal agency for any action authorized, funded, or carried out by such agency unless five members of the Committee vote to grant such exemption. The vote of the Committee members shall not be delegated to other persons.

"(C) The Secretary of the Interior shall be the Chairman of the Committee.

"(D) The Committee shall meet at the call of the Chairman of five of its members.

"(6) The Committee may appoint and fix the pay of such personnel as it deems desirable.

"(7) The staff of the Committee may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Service pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

"(8) The Committee may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

"(9) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

"(10) (A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

"(B) When so authorized by the Committee, any member or agent of the Commission may take any action which the Committee is authorized to take by this paragraph.

"(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

"(D) The Committee may use the United States mails in the same manner and upon the same conditions as other Federal agencies.

"(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

"(11) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

"(12) (A) The Committee shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter which is the subject of any review or determination by the Committee pursuant to subsection (e) of this section. Such attendance of witnesses and the production of evidence may be required from any place within the United States to any place of hearing within the United States.

"(B) If a person issued a subpena under subparagraph (A) of this paragraph refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Committee) order such person to appear before the Committee to produce evidence or give testimony relating to the matter which is the subject of the review or determination by the Committee pursuant to subsection (e) of this section. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(c) The subpena of the Committee shall be served in the manner provided for subpenas issued by a district court of the United States under the Federal Rules of Civil Procedure for the district courts of the United States.

"(D) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

"(13) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(c) REGULATIONS.—Not later than ninety days after the date of enactment of this section, the Committee shall promulgate regulations which set forth the form and manner in which applications by the heads of Federal agencies for review of actions by such agencies shall be submitted to the Committee and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any action of such agency include, but not be limited to—

"(1) a description of the consultation process carried out pursuant to subsection (a) of this section between the head of such Federal agency and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service; and

"(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) of this section.

"(d) SUBMISSION OF APPLICATIONS.—(1) The head of any Federal agency may submit an application for review of any action of such agency to the Committee if, in the opinion of the head of such agency, such agency has complied with the requirements of subsection (a) of this section and that an irresolvable conflict exists with respect to such action. Such application for review shall be submitted in accordance with the regulations promulgated by the Committee under subsection (c) of this section.

(2) The Director of the Fish and Wildlife Service shall prepare and submit to the Committee within thirty days of any submission made under paragraph (1) of this subsection his comments concerning such submission.

"(e) (1) REVIEW AND DETERMINATION.—Not later than one hundred and eighty days after the Committee receives the application and comments submitted pursuant to subsection (d) of this section, the Committee shall review such application and comments and—

"(A) determine, with respect to the action which is the subject of such application, whether or not—

"(i) the requirements of the consultation process described in subsection (a) of this section have been met; and

"(ii) an irresolvable conflict exists; and

"(B) if it makes both determinations in clauses (A) (i) and (ii), determine after notice and opportunity for public hearing whether or not to grant an exemption from the requirements of subsection (a) of this section to the head of such Federal agency for such action.

"(2) The Committee may only grant an exemption for any action under subsection (e) of this section if it determines that—

"(A) there is no reasonable and prudent alternative to such action; and

"(B) the project is of national or regional significance; and

"(C) the benefits of such action clearly outweigh the benefits of conserving the species or its critical habitat, and that such action is in the public interest.

"(f) NATIONAL ENVIRONMENTAL POLICY ACT.—No final determination of the Committee under subsection (e) of this section shall be considered a major Federal action under the terms of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(g) MITIGATION.—In those instances where the Committee determines that an exception is warranted under subsection (e) of this section the Committee must assure that the action approved for such exemption incorporates all reasonable mitigation measures deemed necessary by the Secretary to minimize adverse impacts upon the affected endangered or threatened species or its critical habitat including but not limited to live propagation, transplantation, and habitat acquisition and improvement. The Federal agency or department receiving such exemption should include the costs of such mitigation measures within the overall costs of continuing the proposed action and the Federal agency or department shall transfer to the United States Fish and Wildlife Service out of appropriations or other funds, such money as may be necessary to implement the conservation programs or mitigation measures required by this section for endangered or threatened species or their critical habitats.

"(h) EXCEPTION ON TAKING.—Notwithstanding sections 4(d) and 9(a) of this Act or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (e) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

"(i) AUTHORIZATION.—There is authorized to be appropriated to carry out this section not to exceed $2,500,000 for fiscal year 1979, not to exceed $2,500,000 for fiscal year 1980, and not to exceed $2,500,000 for fiscal year 1981.".

SEC. 4. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed

$3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

[From the Congressional Record, April 12, 1978]

STATEMENTS OF MR. CULVER, MR. BAKER, MR. RANDOLPH, AND MR. WALLOP ON INTRODUCTION OF S. 2899

By Mr. Culver (for himself, Mr. Baker, Mr. Randolph, Mr. Wallop, Mr. Gravel, and Mr. Hodges):

S. 2899. A bill to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that act should be granted for such actions; to the Committee on Environment and Public Works.

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. CULVER. Mr. President, the authorization for the Endangered Species Act of 1973 expires at the end of fiscal year 1978 and reauthorization legislation must be reported by the Committee on Environment and Public Works by May 15. Accordingly the Subcommittee on Resource Protection has scheduled hearings for this Thursday and Friday to consider the need for extending this program.

There is another matter which the subcommittee should address during these hearings—whether flexibility should be added to section 7 of the act. Section 7 requires each Federal agency to assure that it neither conducts nor assists any action which adversely affects an endangered or threatened species or habitat that is critical to the existence of such species. Over the last year this provision has come under considerable public discussion as construction of at least one major project—the Tellico Dam in Tennessee—has been stopped because of a conflict with the act.

In order to provide a vehicle for these discussions, I am cosponsoring today with Senator Randolph, Senator Baker, and other colleagues from the Committee on Environment and Public Works an amendment to the 1973 act which would designate a mechanism whereby such conflicts could be resolved. Our amendment would set up a seven-member Endangered Species Interagency Board composed of the Secretaries of the Interior, Agriculture, the Army, Transportation, the Administrator of the Environmental Protection Agency, and the Chairman of the Council on Environmental Quality, and the Secretary of the Smithsonian. When a Federal agency believes it has a conflict with the act which cannot be resolved through consultation with the Fish and Wildlife Service (FWS) under provisions of section 7, it would petition the Board for relief. The FWS would have 30 days to respond to this petition. After reviewing the petition and providing an opportunity for a formal pubic hearing, the Board would decide whether the project should be permitted to proceed as planned with modifications or terminated.

In order to exempt an activity from the requirements of the Endangered Species Act, five of the seven agency heads under this provision would have to determine: First, that the project is of regional or natural significance; second, that there is no reasonable or prudent alternative; and third, that the benefit of completing the project clearly outweighs the benefits of conserving the species. In addition, the Board must have the assurance that the project agency has taken all reasonable steps to mitigate damage to the species and its habitat.

Mr. President, the assumption behind this proposal is that the interagency consultation process developed by the Fish and Wildlife Service and the National Marine Fisheries Service should remain strong and that it will, in the vast majority of cases, be successful in resolving these conflicts. In those few instances where consultation cannot resolve the problems, however, I believe that this proposal provides a reasonable mechanism of balance.

The amendment would also extend the authorization for appropriations for the Endangered Species Act for fiscal years 1979, 1980, and 1981 at a level of $23 million, $25 million, and $27 million for the Secretary of Interior and $2.5 million, $3 million, and $3.5 million for the Secretary of Commerce, respectively.

Mr. President, let me emphasize that this proposal is by no means cut in stone, but is merely meant to serve as a focus of discussion during this week's hearings.

Mr. BAKER. Mr. President, I am today cosponsoring along with a number of my colleagues a bill that reauthorizes the Endangered Species Act. This act and the protection it provides for certain species of fish, wildlife, and plants has added a very important and heretofore ignored perspective to our national conservation efforts. At the time of the act's original passage the Congress had begun to recognize the tremendous pressures which a growing society imposes on our dwindling wildlife resources. In my opinion, the Congress by approving the Endangered Species Act, expressed the intent that whenever reasonably possible in accomplishing development activities we should avoid deleterious impacts to endangered species or their critical habitats. I do not believe, however, that Congress intended that the protection or management of an endangered species should in all instances override other legitimate national goals or objectives with which they might conflict. The present interpretation of the act, however, has and will continue to lead to just such results. The bill before you today addresses this problem. I hope my colleagues will find that the provision directed at this issue is both balanced and reasonable.

This new provision is intended to provide a format for discussion of this important issue in hearings before the Senate Environment and Public Works Committee's Subcommittee on Resource Protection. These hearings will be held on April 13 and 14.

Let me briefly explain the problem being experienced under the present implementation of the act and what the proposal in our amendment does to resolve it. Under the current interpretation of the act the Fish and Wildlife Service is charged with the care and protection of an extremely broad and continually expanding number of endangered species. As part of the mandate the Service under section 7 of the act must review all Federal or federally assisted programs to assure that no deleterious impacts to endangered species or their critical habitats occur as a result of these programs. In carrying out this mandate the Service has created a consultation process designed to help other agencies seek modifications to projects and thus help avoid conflict with the act. This consultation process has, in many instances, been effective in helping Federal agencies find approaches to carrying out their developmental responsibilities in a manner that avoids destructive impacts on endangered species or their critical habitat. There are, however, instances in which a Federal activity, if it is to achieve its stated purpose, simply cannot avoid a direct impact to a species or its critical habitat. Because the objective of the Endangered Species Act and that of the other Federal program are in direct conflict, even consultation cannot resolve the impasse. The present interpretation of the law provides no flexibility to balance other legitimate national goals and priorities with the need to protect and manage a particular species. Our amendment would allow such a balancing of interests and if it is decided that the Federal activity is of more importance than the protection of a particular species, the action may proceed.

This decision on whether a particular Federal action should be exempted from the requirements of section 7 would be made by a Federal interagency committee. This committee would have the authority to examine only those Federal actions which had completed the consultation process and were still found to be in irresolvable conflict with the act.

I believe this is a useful and needed addition to the Endangered Species Act and hope that in the next few weeks as the Endangered Species Act is considered in committee it will receive constructive criticism and support. The discussions in committee should address the concept and the structure of the interagency committee and what the best criteria for resolution of conflicts under the act should be. It is only through a thorough discussion of these and other issues that the committee can design a process that fully addresses the problems that have arisen under the act. Hopefully the bill we introduce today will stimulate and provide a vehicle for these discussions.

Mr. **Randolph**. Mr. President, when the Endangered Species Act was passed by Congress in 1973, it was hailed as landmark environmental legislation. It established the United States as a world leader in the international effort to bring back from the brink of extinction hundreds of unique plant and animal species.

One of the most important provisions of that statute is section 7 which requires each Federal agency to assure that it neither conducts nor assists any action which adversely affects an endangered species or its critical habitat. This provision declares a national policy that the Federal Government is committed to the conservation of these fish, wildlife, and plants and will not knowingly contribute to their demise.

Over the last year this provision has become the subject of controversy as a result of the U.S. 6th Circuit Court of Appeals opinion in Hill versus TVA. In its decision, the court enjoined TVA from completing construction of the $116 million Tellico Dam on the Little Tennessee River, because the impoundment would destroy the critical habitat of the snail darter, an endangered species of fish.

This situation has caused considerable concern among some who fear that some environmentalists, armed with section 7, will be able to literally shut down Federal construction programs by finding a remote species of mussel, snail, or fish at any project site.

This appears to be an over-reaction based on information developed during oversight hearings on the act by the Environment and Public Works Subcommittee on Resource Protection last July. I feel that section 7 as presently drafted may be too inflexible. Conflicts between the Endangered Species Act and Federal activities should be resolved in favor of the species when possible. There may be, however, instances where the project is of such national importance that it should be permitted to continue.

This bill would provide needed flexibility for the endangered species law by enacting an exemption mechanism allowing a balancing judgment where conflicts develop between two Federal objectives. I stress that this is not a final proposal. It is an important step in resolving problems which have arisen. Committee members will seek a broad public discussion of the provisions contained in this measure. However, as a concept it is a reasonable approach which will serve as a well reasoned basis for further consideration.

Mr. WALLOP. Mr. President, I would like to add some remarks to those of my distinguished colleagues about the amendment to the Endangered Species Act which I am cosponsoring today.

My office and a number of other offices have recently received many letters from constituents who truly want to protect wildlife, especially endangered or threatened species, and who are asking me to fight any amendments to the Endangered Species Act. In the past I have asked them if they want me to fight any amendments which might strengthen the act, which usually draws a surprised look. I do not mean to be facetious, but what I would like to do is ask everyone concerned about this important conservation law to consider the merits of this particular approach. I personally believe that it is a carefully thought out and sensitive solution to a problem we should recognize and deal with positively. There are those who will say it is too tough an amendment, and who may attempt to weaken it. I would prefer to fight for the present law than weaken it as some have suggested. While this amendment may not be perfect, I do believe it offers a reasonable vehicle for discussion, and I for one will be willing to consider other strong alternatives which address some of the problems we are facing but do not gut the act.

I am proud to be from a State where abundant wildlife is one of our finest and most cherished treasures. Few States in our union contain the diversity of wild animals which Wyoming boasts, from the delicate trumpeter swan to the wide-roaming grizzly bear. I have the deepest respect and appreciation for every creature, for we share this earth and a common quality of life. Every species, be it a snail darter, woundfin, whooping crane, or grizzly bear, is important in the chain of life and an indicator of the health of our planet. What former National Park Service Director George Hartzog said of our national parks can be easily applied to our wildlife; the species of this world, like our parks, are comparable to the canary in the miner's cap; a stilled voice signaling the presence of death in the mine shaft air. Wildlife are our early warning system. The pressures on them are the same pressures that threaten our overall environment. Species perform essential biological services to maintain a balance of nature in the total environment, and enhance the esthetic and scientific world as well. We are obliged to preserve them and their habitats or we will in short order lose more than we can afford.

The Endangered Species Act of 1973 went beyond the acts of 1966 and 1969 to provide the kind of management tools needed to act early enough to save vanishing species. One of its most important provisions directed Federal agencies to consult with the U.S. Fish and Wildlife

Service whenever a major Federal action might threaten any endangered or threatened species or its critical habitat. Because the U.S. Fish and Wildlife Service has worked hard to insure compliance, and because most agencies have cooperated in the full spirit of the law, we have been able to modify projects in many ways and proceed with ordered developments and preservation of species. Everyone who has worked to fulfill the law should be commended. For consultation is the key to early detection of wildlife-project conflicts, and with cooperation and consultation in the future we can hopefully learn to avoid future project-species conflicts like the one at Tellico Dam. In the meantime the Resources Protection Subcommittee of the Senate Environment and Public Works Committee is considering other ways to address this problem. At present we are considering a bill which will enable States to inventory elements of natural diversity in the natural world in a comprehensive fashion. This information on wildlife habitat and other biological features should enable Federal and State Government, communities, and private interests to identify and plan for significant wildlife habitats and other elements of the natural world in a way not now possible in many States. I hope the committee can address this legislation shortly.

The Endangered Species Act is a strong law, but because it is so strong it is ripe for attack and, unfortunately, for misuse. To my mind the greatest threat to it all along has not been that it so strongly supports wildlife over every other national priority, but that is provisions can be used by well-intentioned individuals to stop Federal projects as a primary goal and in a way never intended by Congress. The potential for abuse of the law exists, and that potential has aroused considerable consternation in Congress and elsewhere. In order to understand the problem, one must understand the complexity of speciation to some extent. While I am no expert on the topic, I was most interested to hear some of the country's finest scientific experts discuss speciation during overnight hearings on this law last year. Speciation is a complex issue over which even the finest minds disagree. However, one fact which seems clear is that species and their subspecies (which the act protects) exist by the millions the world over. We have barely begun to identify all species, and species and subspecies appear and disappear naturally constantly. Extinction, like the appearance of new species, is a normal life process; man has unfortunately accelerated it to a dangerous and irresponsible level.

However, the terms of the Endangered Species Act provide that no Federal agency may take any action which would adversely impact an endangered species or its habitat. With new species unique to a particular locality coming and going naturally all the time, this is a considerable mandate. What it provides is a good opportunity for an individual or group opposed to a particular Federal project to find one of those millions of species and have its critical habitat protected not for the sake of the species, but to prevent the project. Certainly discovering an endangered species is not the easiest thing to do, but it is very possible that a good scientist with enough desire may be able to find an endangered species or subspecies on the vast areas often impacted by a Federal project. I do not deny many of the projects are poor, and probably should not be constructed. However, I do say that the temptation to misuse the Endangered Species Act to stop them remains great.

Major projects throughout this Nation already are being affected by this law. Environmental advocates feel that the stringent provisions of section 7 will force agencies to find a way to modify the projects, and any balancing mechanism will provide a "chink in the armor" of the act and a way for agencies to maneuver for their projects to the possible detriment of species. However, I think we are being blind if we do not recognize the number of potentially irresolvable project-species conflicts which will probably greet Congress in the near future. It seems inevitable to me that congressionally authorized projects undertaken in the name of national and regional interests must and will be stopped by the Endangered Species Act. One example I have seen is the proposed listing of the Virgin River in southern Utah as critical habitat for a fish called the woundfin. This listing could well stop the proposed LaVerkin Springs desalter and one other desalinization project in the Colorado River Basin, designed to implement salinity levels mandated by the Water Pollution Act of 1972. I am not familiar enough with the merits of the LaVerkin Springs plan or the entire salinity control project to judge its merits, and there may be better ways to control salinity. However, this is one example which points out the possibility of having two national goals in conflict.

The Endangered Species Act makes Congress the final arbiter in such cases. I submit that Members of Congress have neither the time nor the expertise to resolve many of these issues. If we do not consider other ways to address this problem which will inevitably arise, I fear that we may lose the entire act and the protection for species and their habitats. I suspect there are indeed Members of Congress who would like to permit development to the detriment of species, who might want to "gut" the act in order to permit other national goals to proceed. By taking this initiative and proposing a stringent examination process in clear cases of project-species conflict, I believe we can keep the teeth in the law and provide a fair arena for flexibility when confronted by no other alternatives.

This amendment, as has been described, creates an Endangered Species Commission of the secretaries from seven agencies. Those agencies have been carefully chosen and include the Departments of Agriculture, Interior, Transportation, along with the Council on Environmental Quality, the Environmental Protection Agency, Smithsonian Institution, and Army. Federal agency heads would be allowed to petition the Commission for exemptions from the act for projects. If the Commission found that the consultation process has occurred and an irresolvable conflict exists, it may grant a project exemption if it determines that there is no reasonable and prudent alternative to such action, and the benefits of such action clearly outweigh the benefits of conserving the species. The exemption would have to be approved by a vote of five or more agencies.

I have agreed to cosponsor this proposal, because I believe we need to act now to avert a wave of future amendments designed to weaken the act and which are not carefully thought out. This is a tough amendment, with tough criteria for any exemption. I am not inflexible in this matter, and hope everyone will recognize this proposal as only a vehicle for discussion and not an iron-clad solution impossible to change. If others can suggest better ways to solve the problems we will encounter with this law, I will study them carefully. As I have noted before, the Endangered Species Act is one of this Nation's finest conservation laws, but only if we manage it sensibly, guard it from misuse, and let biologocial facts and reason guide our perspective.

Calendar No. 804

95th CONGRESS
2d Session

S. 2899

[Report No. 95–874]

IN THE SENATE OF THE UNITED STATES

April 12 (legislative day, February 6), 1978

Mr. Culver (for himself, and Mr. Baker, Mr. Randolph, Mr. Wallop, Mr. Gravel, and Mr. Hodges) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

May 15 (legislative day, April 24), 1978

Reported by Mr. Culver, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such actions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

Sec. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. ~~1536~~ *1532*) is amended—

(1) by inserting after paragraph (4) thereof the following new paragraph:

II

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.";

(2) by inserting after paragraph (7) thereof the following new paragraphs:

"(8) The term 'irresolvable conflict' means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, *after consultation as required in section 7(a) of this Act,* completion of such action would (A) jeopardize the continued existence of an endangered or threatened species, or (B) result in the *adverse modification or* destruction of a critical habitat.~~"; and~~

"(9) For purposes of subsection 7 (e)(2)(C) the term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction."; and

(3) by renumbering the paragraphs thereof, including any references thereto, as paragraphs (1) through ~~(18)~~ *19,* respectively.

SEC. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other

Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall insure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or *adverse* modification of habitat of such species which is determined by the Secretary *after consultation* as appropriate with the affected States, to be critical, unless such agency is granted an exemption for such action by the Committee pursuant to subsection (e) of this section.

"(b) (1) Establishment of Committee.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall review any application submitted to it pursuant to subsection (d) of this section and determine in accordance with subsection (e) of this section whether or not to grant an exemption from the requirements of subsection (a) of this section for the action set forth in such application.

"(3) The Committee shall be composed of seven members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Chairman of the Council on Environmental Quality.

"(D) The Administrator of the Environmental Protection Agency.

"(E) The Secretary of the Interior *(and where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce)*.

"(F) The Secretary of the Smithsonian Institution.

"(G) ~~The Secretary of Transportation.~~ *The Governor of the State which is affected by the action for which an exemption is sought (or in the case of an action affecting more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee as determined among such Governors)*.

"(4) (A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

"(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5) (A) ~~Except as provided in subparagraph (B) of this paragraph, five~~ *Seven* members of the Committee *or their representatives* shall constitute a quorum for the transaction of any function of the Committee.

"(B) The Committee shall not grant any exemption from the requirements of subsection (a) of this section to the head of any Federal agency for any action authorized, funded, or carried out by such agency unless five members of the Committee vote to grant such exemption. The vote of the Committee members shall not be delegated to other persons.

"(C) The Secretary of the Interior shall be the Chairman of the Committee.

"(D) The Committee shall meet at the call of the Chairman of five of its members.

"(E) All meetings and records of the Committee shall be open to the public.

"(6) The Committee may appoint and fix the pay of such personnel as it deems desirable.

"(7) The staff of the Committee may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter

51 and subchapter III of chapter 53 of such title relating to classification and General Service pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

"(8) The Committee may procure temporary and intermittent services to the same extent as is authorized by section 3109 (b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

"(9) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

"(10) (A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

"(B) When so authorized by the Committee, any member or agent of the ~~Commission~~ *Committee* may take any action which the Committee is authorized to take by this paragraph.

"(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

"(D) The Committee may use the United States mails in the same manner and upon the same conditions as other Federal agencies.

"(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

"(11) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

~~"(12) (A) The Committee shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter which is the subject of any review or determination by the Committee pursuant to subsection (c) of this section. Such attendance of witnesses and the production of evidence may be required from any place within the United States to any place of hearing within the United States.~~

~~"(B) If a person issued a subpena under subparagraph (A) of this paragraph refuses to obey such subpena or is guilty of contumacy, any court of the United States within~~

~~the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Committee) order such person to appear before the Committee to produce evidence or give testimony relating to the matter which is the subject of the review or determination by the Committee pursuant to subsection (c) of this section. Any failure to obey such order of the court may be punished by such court as a contempt thereof.~~

~~“(c) The subpena of the Committee shall be served in the manner provided for subpenas issued by a district court of the United States under the Federal Rules of Civil Procedure for the district courts of the United States.~~

~~“(D) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.~~

~~“(13) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled,~~

~~after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.~~

"(12) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(13) To the extent practicable within the time required for action under subsection (e) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under subsection (e) of this section shall be in accordance with sections 554, 555, and 556 of title 5, United States Code.

"(c) REGULATIONS.—Not later than ninety days after the date of enactment of this section, the Committee shall promulgate regulations which set forth the form and manner in which applications by the heads of the Federal agencies for review of actions by such agencies shall be submitted to the Committee and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any action of such agency include, but not be limited to—

"(1) a description of the consultation process carried out pursuant to subsection (a) of this section between the head of such Federal agency and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service; and

"(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) of this section.

"(d) SUBMISSION OF APPLICATIONS.—(1) The head of any Federal agency may submit an application for review of any action of such agency to the Committee if, in the opinion of the head of such agency, such agency has complied with the requirements of subsection (a) of this section and that an irresolvable conflict exists with respect to such action. Such application for review shall be submitted in accordance with the regulations promulgated by the Committee under subsection (c) of this section.

"(2) The Director of the Fish and Wildlife Service *(or where appropriate the Director of the Fish and Wildlife Service in concurrence with the Director of the National Marine Fisheries Service)* shall prepare and submit to the Committee within thirty days of any submission made under paragraph (1) of this subsection his comments concerning such submission.

"(e) (1) REVIEW AND DETERMINATION.~~—Not later than one hundred and eighty days after~~ *After* the Committee receives the application and comments submitted pursuant to subsection (d) of this section, the Committee shall review such application and comments and—

"(A) determine, with respect to the action which is the subject of such application, whether or not—

"(i) the requirements of the consultation process described in subsection (a) of this section have been met; and

"(ii) there has been a reasonable and responsible effort to resolve the conflicts which are known to exist, and the Federal agency requesting such exemption has made, subsequent to the initiation of the consultation under subsection (a) of this section, no irreversible or irretrievable commitment of resources which forecloses the consideration of modification or alternatives to such action; and

"~~(ii)~~ *(iii)* an irresolvable conflict exists; and

"(B) if it makes ~~both determinations in clauses (A) (i) and (ii), determine after notice and opportunity for public hearing~~ *positive determinations under clauses (i), (ii), and (iii) of subparagraph (A), determine and* *publish in the Federal Register, within one hundred and eighty days after receipt of the application and response required in subsection (d) of this section and after notice and public hearing on the record,* whether or not to grant an exemption from the requirements of subsection (a) of this section to the head of such Federal agency for such action.

"(2) The Committee may only grant an exemption for any action under subsection (e) of this section if it determines *on the record* that—

"(A) there is no reasonable and prudent alternative to such action; and

"(B) the ~~project~~ *action* is of national or regional significance; and

"(C) the benefits of such action clearly outweigh the benefits of *alternative courses of action consistent with* conserving the species or its critical habitat, and that such action is in the public interest.

"(f) NATIONAL ENVIRONMENTAL POLICY ACT.—No final determination of the Committee under subsection (e) of this section shall be considered a major Federal action under the terms of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(g) MITIGATION.—In those instances where the Committee determines that an exception is warranted under subsection (e) of this section the Committee must assure that the action approved for such exemption incorporates all reasonable mitigation measures deemed necessary by the Secretary to minimize adverse impacts upon the affected endangered or threatened species or its critical habitat including but not limited to live propagation, transplantation, and habitat acquisition and improvement. The Federal agency or department receiving such exemption ~~should~~ *shall* include the costs of such mitigation measures within the overall costs of continuing the proposed action. ~~and the Federal agency or department shall transfer to the United States Fish and Wildlife Service out of appropriations or other funds, such money as may be necessary to implement the conservation programs or mitigation measures required by this section for endangered or threatened species or their critical habitats.~~

"(h) EXCEPTION ON TAKING.—Notwithstanding sections 4(d) and 9(a) of this Act or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (e) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

"(i) AUTHORIZATION.—There is authorized to be appropriated to carry out this section not to exceed $2,500,000 for fiscal year 1979, not to exceed $2,500,000 for fiscal year 1980, and not to exceed $2,500,000 for fiscal year ~~1981.".~~ *1981.*

"(j) The authority granted to the Endangered Species Committee established in this section shall terminate on September 30, 1981.".

SEC. 4. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)" and by adding the following new paragraph:

"(2) The provisions of this section shall not apply to any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978, or the domestic captive produced progeny of any legally held raptor: Provided, That such raptor has not been intentionally returned to a wild state. Persons holding such raptors must be able to demonstrate that the raptors do, in fact, qualify under the provisions of this paragraph. Such persons shall maintain and submit to the Secretary on request such inventories, documentation, and records as are reasonable and as the Secretary may by regulation require: Provided, That such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

SEC. ~~4.~~ *5.* Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

Calendar No. 804

95th Congress } SENATE { Report
2d Session } { No. 95-874

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

May 15 (legislative day, April 24), 1978.—Ordered to be printed

Mr. Culver, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2899]

The Committee on Environment and Public Works, to which was referred the bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such actions having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

General Statement

The Endangered Species Act of 1973 is the first statute to authorize a comprehensive national program for the conservation of endangered or threatened species of fish, wildlife, and plants.

The regulatory mechanism provided to achieve this goal authorizes and directs the Secretary of the Interior and, for marine species, the Secretary of Commerce to list and to issue regulations for the protection of endangered or threatened species. The Secretary is required to enter into cooperative agreements with, and provide technical and financial assistance to, qualified States for species conservation programs.

Since protection of habitat is a key element in the protection of all species, the act authorizes the Secretary to acquire land for the conservation and propagation of affected species. Furthermore, in section 7 each Federal agency is directed to assure that its actions do not adversely affect listed species or the habitat which the Secretary determines to be critical to their existence. Similarly, section 9 prohibits the taking of, or interstate commerce in, endangered or threatened species except when such use is consistent with a permit or regulations issued by the Secretary to the appropriate State authority.

The authorization for the act, currently $25 million annually for the Secretary of the Interior and $5.5 million annually for the Secretary of Commerce, expires on September 30, 1978. S. 2899 extends the budget authority for the endangered species program through fiscal year 1981 at a level of $75 million for the Secretary of the Interior and $9 million for the Secretary of Commerce.

The bill also contains a provision which is intended to provide a mechanism for the resolution of conflicts which might arise between the Endangered Species Act's mandate to protect and manage endangered and threatened species and other legitimate national goals and priorities such as providing energy, economic development and other benefits to the American people. Some of these objectives have clashed in recent months as construction on certain major Federal projects has been slowed, and in one instance, stopped, since completion of the proposed Federal action would adversely impact endangered or threatened species or their critical habitats.

The Tellico Dam project on the Little Tennessee River has been the most visible case in which the Committee found a seemingly irresolvable conflict between project objectives and the requirements of section 7 of the Endangered Species Act. The dam was nearly 50 percent complete when the snail darter was discovered and 75 percent complete when its critical habitat was designated within the proposed impoundment area of the project. The Fish and Wildlife Service feels TVA should terminate the project because it endangers the snail darter. TVA, on the other hand, feels it has ambiguous congressional directives and that it is not at liberty to terminate the project at this time.

This case has also resulted in several conflicting court suits, including the January 31, 1977, decision of the U.S. Court of Appeals for the Sixth Circuit in *Hiram G. Hill, Jr. et al.* v. *Tennessee Valley Authority*. The appellate court held in this case that a lower court decision ruling that the Tellico Dam should be completed was in error and that TVA should be enjoined from completing the project. The appellate court stated that enforcement of section 7 of the act requires an injunction of all further actions by TVA which may detrimentally alter the critical habitat of the snail darter regardless of mitigating circumstances. This case was appealed to the U.S. Supreme Court where arguments were heard on April 18, 1978. A decision is pending.

While the committee found in its hearings that much controversy still surrounds the Tellico Dam case, the case is the type of Federal action which should be eligible for review by the Endangered Species Committee established by this bill and given appropriate consideration for an exemption under the new review process mandated in this legislation.

Testimony received by the committee indicates that a substantial number of Federal actions currently underway appear to have all the elements of an irresolvable conflict within the provisions of the act. This number may increase signficantly in the future as the Fish and Wildlife Service continues to list additional species and critical habitats. For instance, 1,800 plants and over 100 animal species have been proposed for listing as threatened or endangered and designation of 40 new critical habitats is also under consideration. In addition, the

Service expects to undertake some 20,000 consultations with other Federal agencies during fiscal year 1979 concerning potential conflicts with species and critical habitats which have already been listed. This compares with 4,500 consultation since the act was enacted.

It has also been brought to the committee's attention that the General Accounting Office suspects, but has not confirmed, that the Fish and Wildlife Service has refrained from listing species which may pose a conflict with a Federal action, for fear of provoking the Congress into weakening the protective provisions of section 7.

The committee believes that these circumstances clearly illustrate the need for an amendment to the act which will provide flexibility in its administration, while maintaining protection for threatened and endangered species.

Some flexibility is needed in the act to allow consideration of those cases where a Federal action cannot be completed or its objectives cannot be met without directly conflicting with the requirements of section 7.

The bill does address these situations, and requires that when conflicts with the Endangered Species Act are known or should be known, an agency must consult immediately with the Fish and Wildlife Service and exhaust all reasonable avenues for eliminating the conflict. If this consultation process is unsuccessful in resolving the conflict, the bill provides a further review process in section 7(e) to address the conflict and resolve it.

The bill sets up a seven-member Endangered Species Committee composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of the Smithsonian Institution, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, and the Governor of the State in which the action is located.

When an agency believes it has encountered an irresolvable conflict with the act which cannot be resolved through consultation with the Fish and Wildlife Service or the National Marine Fisheries Service, that agency may petition the Endangered Species Committee for relief. The Fish and Wildlife Service—or when appropriate the Fish and Wildlife Service in consultation with the National Marine Fisheries Service—would have 30 days to respond to the agency's petition and give its views as to whether the consultation process required by section 7 had been fully conducted.

After reviewing the response of the Fish and Wildlife Service and other relevant information, the Endangered Species Committee would decide whether or not the action should be considered for an exemption. No action could be so considered unless the Endangered Species Committee determined: (1) That the requirements of the section 7 consultation process had been met; (2) that there had been a reasonable and responsible effort to resolve the conflicts and that the Federal agency resquesting the exemption has made, subsequent to the initiation of consultation no irreversible or irretrievable commitment of resources which forecloses the consideration of modifications or alternatives to the action; and (3) that an irresolvable conflict does indeed exist. If the Endangered Species Committee makes positive determinations on each of these matters it would then conduct hearings and receive public testimony on whether an exemption is warranted.

Within 180 days after the Endangered Species Committee first received the agency's petition and the Fish and Wildlife Services' response, the Endangered Species Committee must publish in the Federal Register its decision as to whether the action should be exempted, modified, or terminated. No action could be exempted, or exempted with modifications, unless the Endangered Species Committee determines that there is no reasonable and prudent alternative to such action, that the action is of regional or national significance, and that the benefits of the action clearly outweigh the benefits of alternative courses of action that are consistent with conserving the species or its critical habitat, and that the action is in the public interest.

In reviewing available alternatives to the action under review, the committee would be charged to examine the benefits of all available alternatives, not simply those which are within the agency's jurisdiction or are consistent with the original project objectives.

Discussion of Major Provisions

ENDANGERED SPECIES COMMITTEE

After deciding that some additional discretion to resolve conflicts was a necessary addition to the present provision of the Endangered Species Act, the committee considered a number of options on how to introduce this discretionary authority into the present law. Of these options an Endangered Species Committee was chosen as that one best suited to make the necessary balancing decisions regarding conflicts. This committee concept was employed because it seemed to offer the involvement of the broadest array of expertise and the greatest potential for a balancing of viewpoints concerning all the alternatives to be considered.

The Endangered Species Committee would be composed of cabinet-level officials and an elected representative of the State affected by the proposed action.

The Endangered Species Committee has the following members:

1. The Secretary of the Interior, or where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce.
2. The Secretary of the Army.
3. The Secretary of Agriculture.
4. The Secretary of the Smithsonian Institution.
5. The Administrator of the Environmental Protection Agency.
6. The Chairman of the Council on Environmental Quality.
7. The Governor of the State affected by the proposed action.

The Marine Mammal Protection Act gives responsibility for protecting certain endangered and threatened species to the Secretary of Commerce. For cases in which the conflict before the Endangered Species Committee involves such a species, the Secretary of Commerce is required to concur with the Secretary of the Interior before that vote is cast.

The bill was amended by the committee to add the Governor of the State affected by the proposed action as a voting member of the Endangered Species Committee. The purpose of this addition was twofold. First, it was considered important that an elected official be a member of the Endangered Species Committee. Second, there was a perceived need to have someone on the Endangered Species Committee who is in touch with and understands the needs and desires of those persons close to or dependent on the Federal activities which would be the subject of the exemption application. The State Governor met both of these requirements.

If a case should occur in which more than one State is affected by the proposed action and legitimately involved in the outcome of the review process, all appropriate Governors may take part in the Endangered Species Committee work and discussions. For purposes of the decision regarding an exemption, however, the several States shall have collectively only one vote. The Governors will therefore determine among themselves how the single State vote should be cast.

The Endangered Species Committee can carry on business only when all seven members or their designated representatives are present.

The members of the Endangered Species Committee have the responsibility for granting or denying an exemption from the requirements of subsection 7(a) of this act, upon application by the head of the appropriate Federal agency.

In order to grant such an exemption at least five of the seven members must agree that the criteria listed in subsection (e) of this section are met, and vote in favor of such an exemption. A member may not delegate his or her vote to any other person; in the event one of the members is unable to be present at the time a vote is taken, he or she must transmit the vote in writing to the chairman of the Endangered Species Committee.

LICENSING AND PERMITTING

The committee hearings indicated that the requirements of section 7 might also conflict with a number of administrative processes, for example, Federal licensing and permitting of private activities. If a Federal agency, in carrying out an administrative function of this type, determines, after appropriate consultation with the Fish and Wildlife Service or the National Marine Fisheries Service, that a conflict with the act is irresolvable, the agency can petition for an exemption under the provisions of section 7(e). This approach provides relief for both the party who applied for the license or permit and for the Federal agency who might, except for the requirements of the Endangered Species Act, be disposed to approve the license or permit request. This is a reasonable policy for responding to this type of Federal action which might occur on private or Federal lands.

CONSULTATION

The basic premise of S. 2899 is that the integrity of the interagency consultation process designated under section 7 of the act be preserved.

Many, if not most, conflicts between the Endangered Species Act and Federal actions can be resolved by full and good faith consultation between the project agency and the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. The committee intends that only in those instances where the consultation process has been exhausted and a conflict still exists should the Endangered Species Committee consider granting an exemption for a Federal action.

In order to assure this intent, S. 2899 sets up a two step process by which Federal actions can be considered for an exemption. In the first step, the Endangered Species Committee must decide if the application is ripe for review. Specifically, it would have to find first that the requirements of the consultation process described in section 7(a) had been met. These requirements are specifically set forth in regulations promulgated by the Fish and Wildlife Service and the National Marine Fisheries Service in CFR 50, chapter IV, part 402. Second, the Endangered Species Committee would have to determine that a reasonable and responsible effort had been made by both parties to resolve the conflict once it is known to exist and that, subsequent to the initiation of consultation, the project agency had made no irreversible or irretrievable commitment of resources which forecloses the consideration of those modifications or alternatives to such action which are consistent with preserving the species or its critical habitat.

Under the current section 7 regulations, Federal agencies have a responsibility to identify activities or programs which they undertake that may affect listed species or their critical habitat and to request consultation with the Services concerning those activities or programs. Thus, the consultation process must be initiated at that point in the implementation of the action where the Federal agency first recognizes that the activity may have a detrimental effect on a species or its critical habitat.

Finally, in the process of deciding whether to review fully an action for an exemption the Endangered Species Committee would be required to determine that an irresolvable conflict does indeed exist. The term irresolvable conflict is defined as an action authorized, funded or carried out by a Federal agency where, after consultation as required in section 7, completion of such action would jeopardize the continued existence of an endangered or threatened species or result in the adverse modification or destruction of its critical habitat. An irresolvable conflict cannot be found to exist unless the project agency had thorouhgly reviewed all modifications and alternatives to the action that are within its jurisdiction and consistent with the objectives of the project, but has determined that even with the adoption of such modifications or alternatives the activity cannot be completed without adversely affecting a listed species or critical habitat.

CRITERIA

If the Endangered Species Committee determines that the initial criteria for review have been met by the Federal agency making the application, the Federal action in question is appropriate for further consideration. The review process must be accomplished within 180 days after the receipt of the petition for an exemption and response from the Fish and Wildlife Service. The final determination must be made on the record and thus must be accompanied by a formal hearing process.

In addition, the final decision to grant an exemption must be based on criteria set forth in section 7(e)(2) as follows:

1. There is no reasonable and prudent alternative to such action.
2. The action is of national or regional significance.
3. The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest.

The bill also requires that during the review process the Endangered Species Committee must address the benefits of all alternatives which might be available in lieu of the proposed action. This criterion makes it clear that the Endangered Species Committee must consider all options which might eliminate harm to the species, independent of the stage of project completion. As a project approaches completion certain alternatives to the proposed action may not be reasonably or prudently available as options. It is also clear that the earlier in the progress of a project a conflict is recognized, the easier it is to design an alternative consistent with the requirements of the act, or to abandon the proposed action. It may be feasible to utilize resources already expended or lands acquired for a proposed action to carry out alternatives, such as development of parks or wildlife refuges, which are unrelated to the initial project. These alternatives will also bring benefits to the public. The Endangered Species Committee should apply this standard of reasonableness in assessing the availability of alternatives to any action before them for review.

The criteria in section 7(e)(2) should not be viewed as a limitation on those factors the Endangered Species Committee might deem appropriate for use in making a final decision. It should, however, give some guidance as to those elements that the Congress believes are essential to a reasonable decision in cases of conflict, along with some idea of what emphasis should be given these elements in any decision.

The committee can not foresee all the circumstances and factors which might be important in a decision regarding an exemption. It is particularly difficult to assess exactly what facts are or will be important when viewing a particular species within the subsection (e) process. Clearly such factors as the ecological, educational, genetic, recreational, aesthetic, historic and scientific values of the affected endangered or threatened species should be given weight in any final decision.

In the balancing process the Endangered Species Committee is not expected to balance simply the importance of a species against the value of a Federal action. The criteria expressly mandate that the balancing which is to take place is between the benefits of a proposed Federal action and the benefits of alternative courses of action which will not result in harm to the species or its critical habitat. The committee recognized the difficulty of simply comparing species value with a proposed Federal action. The balancing of the benefits of alternative courses of action mandated by the criteria will allow a more logical comparison of the available options.

Although the balancing process is difficult the Endangered Species Committee should note that the decision to allow the extinction of a species or destroy all or parts of its critical habitat should not be taken lightly and great care must be applied in trying to decide finally, in cases of conflict, what future course of action is in the public interest.

SUBPENA POWER

The bill provides authority for the Endangered Species Committee to issue subpenas for the attendance of witnesses and the production of relevant papers, books, and documents. The authority should be used with restraint, when necessary to obtain information material to an exemption decision. If a private party withdraws from seeking a Federal action under consideration for an exemption under these amendments, the subpena power would no longer need to apply to such private party.

OTHER PROVISIONS

RAPTORS

During the past 15 years biologists, conservationists, and falconers have been working to produce raptors through propagation in captivity. In this work an emphasis has been placed on raptors which are now listed as endangered under the authority of the Endangered Species Act. However, prohibitions contained in section 9 of the law against commerce in endangered species have impeded these breeding activities.

S. 2899 amends section 9 of the act to clarify the situation regarding domestic, captive-produced raptors. For the purpose of this amendment, raptor means any bird of prey.

Unless specified in other laws, raptors held prior to the enactment of the act on December 28, 1973 are exempted from the provisions and prohibitions of the act. It is the intent of the committee that the domestic captive-produced progeny of any raptor which was legally held prior to enactment will also be exempt from the provisions and prohibitions of the act, even if such progeny were produced after December 28, 1973.

In order to encourage breeding of raptors in captivity, the domestic captive-produced progeny of raptors considered to be endangered, but legally taken from the wild after December 28, 1973, shall be considered for legal purposes in a like manner as the progeny of raptors captured before 1973. The committee believes this will alleviate some of the human pressures on wild raptor populations, will increase genetic diversity in captive populations, and will further encourage captive production of raptors for conservation, scientific, and breeding purposes.

Further, it is the intent of the committee that where domestic captive-bred raptors have been intentionally released and returned to a wild state for conservation and reintroduction purposes, these raptors will be considered to be fully protected under the act.

The Secretary may require the owners of all exempted raptors to keep records and require bands or other permanent markings to distinguish them from wild birds. The records and inventories may be inspected by agents of the Secretary at reasonable times. These records, permanent markers and inventory procedures should not unnecessarily duplicate those now required annually under the Migratory Bird Treaty Act for special purpose permits and falconer permits.

SCIENTIFIC AND MUSEUM SPECIMENS

In oversight hearings concerning the Endangered Species Act the committee also received testimony from organizations representing zoos. These witnesses were skeptical of the necessity for the stringent and burdensome process developed by the Fish and Wildlife Service for regulation of their captive bred endangered and threatened species. The committee advises the Service to reexamine these regulations and the rationale upon which they are based on light of this testimony, and to make every effort to ensure that only those regulations which result in real benefits for wild populations of endangered and threatened species are retained. In any event, every effort should be made by the Service to reduce the amount of paperwork and time involved in this regulatory process.

The committee notes favorably the Fish and Wildlife Service announcement in the April 14, 1978, Federal Register that they are examining the possibility of reclassifying captive endangered species to a less restrictive status under the Endangered Species Act. The committee agrees that some distinctions ought to be made between the regulatory processes relating to captive endangered species as opposed to wild populations of that same species. The committee recommends that the Service thoroughly examine the available alternatives and then reform the regulatory process concerning captive endangered species so that only those regulations that can be reasonably expected to enhance the protection of endangered species be retained.

The committee also received testimony on a related issue, the manner in which the Endangered Species Act affects scientific pursuits, particularly work carried on in museums. In discussions with members of the scientific communities the Fish and Wildlife Service has agreed to reexamine its present regulations. The permit procedures in this regard badly need to be streamlined.

Large amounts of time and money have been committed to compliance with these regulations, although little may be accomplished by control of museum specimens. There is little evidence that such controls have any appreciable effect on existing populations of endangered species.

The committee believes that a distinction should be made between regulation of legitimate scientific pursuits and commercial activities involving endangered species, and that regulations should be promulgated which do not unnecessarily impede or obstruct legitimate scientific inquiries.

The committee requests that the Fish and Wildlife Service study upgrading the efforts of the Customs Service activities and other alternatives for monitoring and protecting endangered species and report its findings back to the committee within a reasonable time.

CRITICAL HABITAT DESIGNATION AND PROTECTION

It has come to the committee's attention that under present regulations the Fish and Wildlife Service is now using the same criteria for designating and protecting areas to extend the range of an endangered species as are being used in designation and protection of those areas which are truly critical to the continued existence of a species. The committee feels that the rationale for this policy ought to be reexamined by the Fish and Wildlife Service. There seems to be little or no reason to give exactly the same status to lands needed for population expansion as is given to those lands which are critical to a species continued survival.

The committee is particularly concerned about the implications of this policy when extremely large land areas are involved in a critical habitat designation. For example, as much as 10 million acres of Forest Service land is involved in the critical habitat being proposed for the grizzly bear in three Western States. Much of the land involved in this proposed designation is not habitat that is necessary for the continued survival of the bear. It instead is being designated so that the present population within the true critical habitat can expand. The goal of expanding existing populations of endangered species in order that they might be delisted is understandable. This process does, however, substantially increase the amount of area involved in critical habitat designation and therefore increases proportionately the area that is subject to the regulations and prohibitions which apply to critical habitats.

In many cases the Fish and Wildlife Service has been unable to explain fully or predict what the impacts of a critical habitat designation are going to be on activities which occur within a designated critical habitat. This is the case with the grizzly bear critical habitat. Certain adjustments must be made in planned activities, especially on habitat necessary for the continued survival of a species but identical adjustments may not be necessary on expansion lands.

The committee directs that the Fish and Wildlife Service examine this ambiguity in its regulatory process for critical habitat designations. Hopefully this review will be accomplished and a report delivered to this committee before a final decision is made on the grizzly bear designation.

ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were two rollcall votes during the committee's consideration of the bill. The results were announced at the time of the vote. The committee ordered the bill reported by unanimous voice vote.

EVALUATION OF REGULATORY IMPACTS

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill does not add to or reduce the regulatory authority provided by existing law.

The bill has no impact on the personal privacy of indivduals.

The bill has an impact on paperwork to the extent that Federal agencies must submit information to the Endangered Species Committee concerning actions which they authorize, fund or carry out which are under consideration by the committee.

There is no specific economic impact of the bill.

The bill has an impact on recordkeeping requirements to the extent that individuals with captive produced raptors are required by the Secretary of the Interior to keep records in addition to those required by existing law.

ESTIMATES OF COST

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in this report of the committee's estimate of the costs of the reported legislation, together with estimates prepared by any Federal agency. S. 2899 provides a total authorization of $75 million for the Department of the Interior and $9 million for the Department of Commerce, while an authorization of $7.5 million is provided for the Endangered Species Committee. This compares to an estimate of $17 million by the Department of the Interior and $2.5 million by the Department of Commerce.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 12, 1978.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2899, the Endangered Species Act Amendments of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

JAMES BLUM
(For Robert A. Levine, Deputy Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MAY 12, 1978.

1. Bill number: S. 2899.
2. Bill title: Endangered Species Act Amendments of 1978.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 11, 1978.
4. Bill purpose: The bill authorizes appropriations to the U.S. Fish and Wildlife Service (USFWS) of $23 million in fiscal year 1979, $25 million in fiscal year 1980, and $27 million in fiscal year 1981.

The bill also provides authorizations of $2.5 million in each of the fiscal years 1979, 1980 and 1981 to the Department of the Interior for the Endangered Species Committee, which is established in this bill. The bill specifies that the committee would approve federal agency actions when it determines that the action does not jeopardize the continued existence of any endangered or threatened species or the action does not result in the destruction of such species habitat. In certain instances when damage is likely to result from the action, the committee could approve the project by providing exemptions to existing standards. This review would only occur when agencies submit an application to the Endangered Species Committee. The committee's decision is likely to be supported by the courts if the proper procedural processes are followed by the committee.

In addition, authorization of $2.5 million for fiscal year 1979, $3.0 million for fiscal year 1980 and $3.5 million for fiscal year 1981 is provided to the Department of Commerce for the National Oceanic and Atmospheric Administration (NOAA).

5. Cost estimate:

	Millions
Fiscal year 1979:	
Authorization level	28.0
Cost estimate	26.2
Fiscal year 1980:	
Authorization level	30.5
Cost estimate	30.3
Fiscal year 1981:	
Authorization level	33.0
Cost estimate	32.9
Fiscal year 1982:	
Authorization level	-----
Cost estimate	2.1
Fiscal year 1983:	
Cost estimate	-----
Cost estimate	-----

The costs of this bill fall within budget function 300.

6. Basis of estimate: The authorization levels are those stated in the bill and are assumed to be fully appropriated. Costs are estimated by applying a two-year outlay rate to the level of appropriation provided for NOAA, USFWS, and the Endangered Species Committee. Spendout rates for NOAA and the USFWS were developed in consultation with agency staffs. The outlay rate for the Endangered Species Committee was estimated to be similar to the rate of the Council on Environmental Quality.

7. Estimate comparison: None.

8. Previous CBO estimate: A cost estimate was prepared on March 22, 1978 for H.R. 10883, as ordered reported by the House Committee on Merchant Marine and Fisheries. The House bill is similar to S. 2899, except it does not include the establishment of an Endangered Species Committee.

9. Estimate prepared by James V. Manaro (225-7760).

10. Estimate approved by:

JAMES BLUM,
Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection (f) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

[From the Congressional Record, July 17, 1978]

SENATE CONSIDERATION AND PASSAGE OF S. 2899, WITH AMENDMENTS

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. ROBERT C. BYRD. Mr. President, there seems to be nothing at this point that I can call up at the moment. I ask unanimous consent that the Senate proceed to consider the endangered species bill, with the understanding that once the title is read, I shall move to recess for a period.

The PRESIDING OFFICER. The clerk will state the bill by title. The legislative clerk read as follows:

A bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that act should be granted for such actions.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works with amendments as follows:

On page 1, line 6, strike "1536" and insert "1532";

On page 2, line 7, after "which," insert "after consultation as required in section 7 (a) of this Act,":

On page 2, line 11, after "the" insert "adverse modification or";

On page 2, line 12, strike " "; and";

On page 2, beginning with line 13, insert the following:

"(9) For purposes of subsection 7(e)(2)(C) the term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction."; and

On page 2, line 19, strike "(18)" and insert "(19)";

On page 3, line 9, after "or" insert "adverse";

On page 3, line 10, after "Secretary" insert "after consultation";

On page 4, line 9, after "Interior" insert "(and where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce)";

On page 4, line 13, strike "Secretary of Transportation" and insert "Governor of the State which is affected by the action for which an exemption is sought (or in the case of an action affecting more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee as determined among such Governors)";

On page 5, line 3, strike "Except as provided in subparagraph (B) of this paragraph, five" and insert "Seven";

On page 5, line 4, after "Committee" insert "or their representatives";

On page 5, beginning with line 18, insert the following:

"(E) All meetings and records of the Committee shall be open to the public.

On page 6, line 21, strike "Commission" and insert "Committee";

On page 7, beginning with line 15, strike through and including page 9, line 4, and insert in lieu thereof the following:

"(12) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(13) To the extent practicable within the time required for action under subsection (e) of this section, and except to the extent inconsistent with the requiremens of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under subsection (e) of this section shall be in accordance with sections 554, 555, and 556 of title 5, United States Code.

On page 10, line 20, after "Service insert "(or where appropriate the Director of the Fish and Wildlife Service in concurrence with the Director of the National Marine Fisheries Service)";

On page 11, line 3, strike "—Not later than one hundred and eighty days after" and insert "After";

On page 11, beginning with line 13, insert the following:

"(ii) there has been a reasonable and responsible effort to resolve the conflicts which are known to exist, and the Federal agency requesting such exemption has made, subsequent to the initiation of the consultation under subsection (a) of this section, no irreversible or irretrievable commitment of resources which forecloses the consideration of modification or alternatives to such action; and

On page 11, line 21, strike "(ii)" and insert "(iii)";

On page 11, line 22, strike "both determinations in clauses (A) (i) and (ii), determine after notice and opportunity for public hearing" and insert "positive determinations under clauses (i), (ii), and (iii) of subparagraph (A), determine and publish in the Federal Register, within one hundred and eighty days after receipt of the application and response required in subsection (d) of this section and after notice and public hearing on the record,";

On page 12, line 9, after "determines" insert "on the record";

On page 12, line 13, strike "project" and insert "action";

On page 12, line 16, after "of" insert "alternative courses of action consistent with";

On page 13, line 8, strike "should" and insert ", an";

On page 13, line 10, strike "and the Federal agency or department shall transfer to the United States Fish and Wildlife Service out of appropriations or other funds, such money as may be necessary to implement the conservation programs or mitigation measures required by this section for endangered or threatened species or their critical habitats";

On page 14. line 2, strike ,"1981," and insert "1981."; and insert the following:
On page 14, line 2, strike "1981,".

"(j) The authority granted to the Endangered Species Committee established in this section shall terminate on September 30, 1981.".

SEC. 4. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)" and by adding the following new paragraph:

"(2) The provisions of this section shall not apply to any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978, or the domestic captive produced progeny of any legally held raptor: *Provided*, That such raptor has not been intentionally returned to a wild state. Persons holding such raptors must be able to demonstrate that the raptors do, in fact, qualify under the provisions of this paragraph. Such persons shall maintain and submit to the Secretary on request such inventories, documentation, and records as are reasonable and as the Secretary may by regulation require: *Provided*, That such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

On page 14, line 23, strike "4" and insert "5";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

SEC. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(1) by inserting after paragraph (4) thereof following new paragraph:

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.";

(2) by inserting after paragraph (7) thereof the following new paragraphs:

"(8) The term 'irresolvable conflict' means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, after consultation as required in section 7(a) of this Act, completion of such action would (A) jeopardize the continued existence of an endangered or threatened species, or (B) result in the adverse modification or destruction of a critical habitat.

"(9) For purposes of subsection 7(e)(2)(C) the term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction."; and

(3) by renumbering the paragraphs thereof, including any references thereto, as paragraphs (1) through (19) respectively.

SEC. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall insure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary after consultation as appropriate with the affected States, to be critical, unless such agency is granted an exemption for such action by the Committee pursuant to subsection (e) of this section.

"(b)(1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall review any application submitted to it pursuant to subsection (d) of this section and determine in accordance with subsection (e) of this section whether or not to grant an exemption from the requirements of subsection (a) of this section for the action set forth in such application.

"(3) The Committee shall be composed of seven members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Chairman of the Council on Environmental Quality.

"(D) The Administrator of the Environmental Protection Agency.

"(E) The Secretary of the Interior (and where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce).

"(F) The Secretary of the Smithsonian Institution.

"(G) The Governor of the State which is affected by the action for which an exemption is sought (or in the case of an action affecting more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee as determined among such Governors).

"(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

"(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5)(A) Seven members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee.

"(B) The Committee shall not grant any exemption from the requirements of subsection (a) of this section to the head of any Federal agency for any action authorized, funded, or carried out by such agency unless five members of the Committee vote to grant such exemption. The vote of the Committee members shall not be delegated to other persons.

"(C) The Secretary of the Interior shall be the Chairman of the Committee.

"(D) The Committee shall meet at the call of the Chairman or five of its members.

"(E) All meetings and records of the Committee shall be open to the public.

"(6) The Committee may appoint and fix the pay of such personnel as it deems desirable.

"(7) The staff of the Committee may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Service pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

"(8) The Committee may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States

Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

"(9) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

"(10) (A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

"(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

"(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

"(D) The Committee may use the United States mails in the same manner and upon the same conditions as other Federal agencies.

"(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

"(11) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

"(12) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(13) To the extent practicable within the time required for action under subsection (e) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under subsection (e) of this section shall be in accordance with sections 554, 555, and 556 of title 5, United States Code.

"(c) Regulations.—Not later than ninety days after the date of enactment of this section, the Committee shall promulgate regulations which set forth the form and manner in which applications by the heads of the Federal agencies for review of actions by such agencies shall be submitted to the Committee and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any action of such agency include, but not be limited to—

"(1) a description of the consultation process carried out pursuant to subsection (a) of this section between the head of such Federal agency and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service; and

"(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) of this section.

"(d) Submission of Applications.—(1) The head of any Federal agency may submit an application for review of any action of such agency to the Committee if, in the opinion of the head of such agency, such agency has complied with the requirements of subsection (a) of this section and that an irresolvable conflict exists with respect to such action. Such application for review shall be submitted in accordance with the regulations promulgated by the Committee under subsection (c) of this section.

"(2) The Director of the Fish and Wildlife Service (or where appropriate the Director of the Fish and Wildlife Service in concurrence with the Director of the National Marine Fisheries Service) shall prepare and submit to the Committee within thirty days of any submission made under paragraph (1) of this subsection his comments concerning such submission.

"(e) (1) Review and Determination.—After the Committee receives the application and comments submitted pursuant to subsection (d) of this section, the Committee shall review such application and comments and—

"(A) determine, with respect to the action which is the subject of such application, whether or not—

"(i) the requirements of the consultation process described in subsection (a) of this section have been met; and "(ii) there has been a reasonable and responsible effort to resolve the conflicts which are known to exist, and the Federal agency requesting such exemption has made subsequent to the initiation of the consultation under subsection (a) of this section, no irreversible or irretrievable commitment of resources which forecloses the consideration of modification or alternatives to such action; and

"(iii) an irresolvable conflict exists; and

"(B) if it makes positive determinations under clauses (i), (ii), and (iii) of subparagraph (A), determine and publish in the Federal Register, within one hundred and eighty days after receipt of the application and response required in subsection (d) of this section and after notice and public hearing on the record, whether or not to grant an exemption from the requirements of subsection (a) of this section to the head of such Federal agency for such action.

"(2) The Committee may only grant an exemption for any action under subsection (e) of this section if it determines on the record that—

"(A) there is no reasonable and prudent alternative to such action; and

"(B) the action is of national or regional significance; and

"(C) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest.

"(f) National Environmental Policy Act.—No final determination of the Committee under subsection (e) of this section shall be considered a major Federal action under the terms of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

"(g) Mitigation.—In those instances where the Committee determines that an exception is warranted under subsection (e) of this section the Committee must assure that the action approved for such exemption incorporates all reasonable mitigation measures deemed necessary by the Secretary to minimize adverse impacts upon the affected endangered or threatened species or its critical habitat including but not limited to live propagation, transplantation, and habitat acquisition and improvement. The Federal agency or department receiving such exemption shall include the costs of such mitigation measures within the overall costs of continuing the proposed action.

"(h) Exception on Taking.—Notwithstanding sections 4(d) and 9(a) of this Act or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (e) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

"(i) Authorization.—There is authorized to be appropriated to carry out this section not to exceed $2,500,000 for fiscal year 1979, not to exceed $2,500,000 for fiscal year 1980, and not to exceed $2,500,000 for fiscal year 1981.

"(j) The authority granted to the Endangered Species Committee established in this section shall terminate on September 30, 1981.".

Sec. 4. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)" and by adding the following new paragraph:

"(2) The provisions of this section shall not apply to any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978, or the domestic captive produced progeny of any legally held raptor: *Provided*, That such raptor has not been intentionally returned to a wild state. Persons holding such raptors must be able to demonstrate that the raptors do, in fact, qualify under the provisions of this paragraph. Such persons shall maintain and submit to the Secretary on request such inventories, documentation, and records as are reasonable and as the Secretary may by regulation require: *Provided*, That such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

Sec. 5. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for

the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

The PRESIDING OFFICER. The bill before the Senate is S. 2899. Time for debate on this bill is limited to 2 hours, to be equally divided and controlled by the Senator from Iowa (Mr. Culver) and the Senator from Vermont (Mr. Stafford) with 30 minutes on any amendment except one to be offered by the Senator from Mississippi (Mr. Stennis), on which there shall be 1½ hours and with 15 minutes on any debatable motion, appeal, or point of order.

The Senate continued with the consideration of S. 2899.

Mr. STENNIS. Mr. President, will the Senator yield to me for a parliamentary inquiry?

Mr. CULVER. I am delighted to yield.

Mr. STENNIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STENNIS. To refresh our recollection, Mr. President, the Senator from Iowa now is proceeding under the unanimous-consent agreement to take up the so-called endangered species bill.

Mr. CULVER. That is correct.

Mr. STENNIS. And the Senator is floor manager of the bill.

Mr. CULVER. Yes.

Mr. STENNIS. We had an understanding about amendments and amendments in the second degree, as I recall, and I had an amendment in at that time and it was treated to 1½ hours equally divided; is that correct?

Mr. CULVER. The Senator from Mississippi is correct. We have provision under the unanimous-consent agreement for 2 hours of general debate, with the understanding as well that the amendment of the Senator from Mississippi will be accorded 1½ hours of debate to be equally divided and any other amendments will be accorded 30 minutes of debate equally divided.

Mr. STENNIS. I thank the Senator from Iowa very much.

Mr. CULVER. Mr. President, for the next few hours the Senate will be considering legislation, S. 2899, which will reauthorize and amend the Endangered Species Act which was enacted in 1972 through the wisdom of Congress. I use the term wisdom advisedly, for there is little doubt, in my judgment, that this act is one of the most significant and profound laws adopted by our Nation.

The Endangered Species Act was a recognition—and a woefully late one—that our developmental activities were responsible for destroying forms of life which were present as a result of processes which began with the first appearance of life on Earth 3½ billion years ago. All species present today have been shaped by those forces, and they have evolved and developed for ages which in contrast make the length of our own lifetimes insignificant.

This has been a continuing saga. Species and life forms appear, flourish for a time, and then disappear forever. This is a natural process, and one we must recognize as we consider this legislation today.

And yet, events shaped by our industrialization over the past few hundred years have led to a sharp acceleration in the rate of extinction, to the point where the natural process may be increased by a factor of hundreds or even thousands. The chilling tragedy of this massive loss of species from our ecosystems and biosphere will never be fully understood, because among the species irreversibly lost are some whose existence we never realized, and whose contribution to science and mankind will never be known.

The Endangered Species Act is a first, a belated, and a noble attempt to reduce these losses by requiring that our citizens and our Government be aware of threatened or endangered species, and that they plan future activities to prevent these losses. The act has without question already had a positive effect in this regard. In just 5 years, it has probably been responsible for saving several species from extinction.

Unfortunately, one provision of the law has generated considerable attention in recent months. Section 7 of the Endangered Species Act requires that all Federal agencies undertake necessary precautions to assure that actions or projects authorized, funded, or carried out by them do not jeopardize the continued existence of an endangered species or its critical habitat.

This is in every sense a rational and necessary provision, because Federal actions have done much to alter our landscape and environment. Section 7 was designed to require a new and specific analysis of these actions and to require planning so that we could avoid recognizable harm to any extremely rare species.

This section establishes a specific process of consultation which must take place between the construction agency and the U.S. Fish and Wildlife Service (FWS) which implements the Endangered Species Act. This mechanism has led to the resolution of a vast majority of the potential conflicts which have arisen since 1973.

As all my colleagues are aware, this provision of the law has been used successfully to prevent the completion of the Tellico Dam in Tennessee, and it appears likely that a growing number of other projects will not be completed, because of this section. During the past months we have heard many emotional discussions from both sides about the case of Tellico, whose reservoir would have flooded the only remaining habitat for a small species of fish not even known to exist until several years ago.

Strictly speaking, the decision of the Supreme Court in the case of Hill against the Tennessee Valley Authority was a good one, in that it correctly interpreted the purposes of the law and the intent of Congress, which was to give priority to the important value of endangered species.

During the past year the Resource Protection Subcommittee, which has jurisdiction over the Endangered Species Act, has held 6 days of hearings on the implementation of the act. The committee received persuasive testimony that there are now many other projects in the Nation where consultative resolution may not be possible under the existing arrangement.

It has also been brought to the committee's attention that the General Accounting Office suspects, but has not confirmed, that the Fish and Wildlife Service has refrained from listing species which may pose a conflict with a Federal action, for fear of provoking the Congress into weakening the protective provisions of section 7. In addition, the listing of endangered species is increasing dramatically. One thousand and eight hundred plant species have been proposed, as have 40 additional critical habitat designations. The inevitable consequence of these developments is an intensifying pressure on Congress to destroy the objective of this valuable legislation or similarly exempt various projects.

The Committee on Environment and Public Works unanimously approved—after considerable discussion—the bill before us today, S. 2899, which amends the Endangered Species Act to establish a rational and responsible mechanism for resolving future conflicts and at the same time assure maximum protection for all endangered species. It provides a general solution to these problems and is designed to avoid ad hoc exemptions or the emasculation of the act as a result of short-term pressures on Congress which overlook the importance of this law.

Briefly, the bill establishes an Endangered Species Committee, composed of seven public officials, including the heads of six Federal agencies and the Governor of the State affected by the conflict. The committee would review and arbitrate conflicts which involve Federal projects and endangered species, and it could exempt a project from compliance with section 7 of the act if it agreed that certain criteria had been met. These criteria would require the committee to evaluate social, cultural, economic, and other benefits of the project as well as the ecological, educational, and scientific and other benefits of alternatives which would conserve the species. In addition, the bill would stimulate the resolution of impasses by requiring good faith efforts in consultation between the action agency and the U.S. Fish and Wildlife Service.

Mr. President, I want to assure my colleagues that the proposal before us is one which has received serious scrutiny by our committee. It was, as I have mentioned, adopted unanimously by the committee. We are satisfied that it does preserve the integrity of the Endangered Species Act and yet provides the flexibility which will be needed in the coming years. Most importantly, it is an attempt to get ahead of foreseeable problems and be prepared for them in a rational way.

It is not possible to overstate the importance of keeping the Endangered Species Act strong. Enlightened self-interest requires that we do our best to preserve these species, which have evolved over millions and billions of years. We owe it to our children and grandchildren to pass on to them a world that is intact.

For the record, Mr. President, I would like at this time to present a more comprehensive and detailed analysis of the bill, S. 2899.

The Endangered Species Act of 1973 is the first statute to authorize a comprehensive national program for the conservation of endangered or threatened species of fish, wildlife, and plants.

The regulatory mechanism provided to achieve this goal authorizes and directs the Secretary of the Interior and, for marine species, the

Secretary of Commerce to list and to issue regulations for the protection of endangered or threatened species. The Secretary is required to enter into cooperative agreements with, and provide technical and financial assistance to, qualified States for species conservation programs.

The authorization for the act, currently $25 million annually for the Secretary of the Interior and $5.5 million annually for the Secretary of Commerce, expires on September 30, 1978. S. 2899 extends the budget authority for the endangered species program through fiscal year 1981 at a level of $75 million for the Secretary of the Interior and $9 million for the Secretary of Commerce.

As I mentioned, the bill also contains a provision which is intended to provide a mechanism for the resolution of conflicts which might arise between the Endangered Species Act's mandate to protect and manage endangered and threatened species and other legitimate national goals and priorities such as providing energy, economic development, and other benefits to the American people. Some of the objectives have clashed in recent months as construction on certain major Federal projects has been slowed, and in one instance, stopped, since completion of the proposed Federal action would adversely impact endangered or threatened species or their critical habitats.

The Tellico Dam project on the Little Tennessee River has been probably the most visible case in which the committee found a difficult conflict between project objectives and the requirements of section 7 of the Endangered Species Act. The Fish and Wildlife Service feels TVA should terminate or modify the project, because it endangers the snail darter. TVA, on the other hand, feels it has ambiguous congressional directives and that it is not at liberty to terminate the project at this time.

This case has also resulted in a court suit, which was pursued to the Supreme Court, Hiram G. Hill, Jr. et al. against Tennessee Valley Authority. The appellate court had held in this case that a lower court decision ruling that the Tellico Dam should be completed was in error and that TVA should be enjoined from completing the project. The appellate court stated that enforcement of section 7 of the act requires an injunction of all further actions by TVA which may detrimentally alter the critical habitat of the snail darter regardless of mitigating circumstances. Arguments were heard before the U.S. Supreme Court on April 18, 1978. On June 15, 1978, the Court announced its decision in the case, upholding the decision of the appellate court. Mr. President, the Court's decision is important and relevant to the consideration of this legislation, and I think the syllabus will be of interest to my colleagues.

I ask unanimous consent that the syllabus be printed in the Record.

There being no objection, the syllabus was ordered to be printed in the Record, as follows:

SYLLABUS

The Endangered Species Act of 1973 (Act) authorizes the Secretary of the Interior (Secretary) in § 4 to declare a species of life "endangered." Section 7 specifies that all "Federal departments and agencies shall, . . . with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of [the] Act by carrying out programs for the conservation of endangered species . . . and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species or result in the destruction or modification of habitat of such species which is determined by the Secretary . . . to be critical." Shortly after the Act's passage the Secretary was petitioned to list a small fish popularly known as the snail darter as an endangered species under the Act. Thereafter the Secretary made the designation. Having determined that the snail darter apparently lives only in that portion of the Little Tennessee River that would be completely inundated by the impoundment of the reservoir created as a consequence of the completion of the Tellico Dam, he declared that area as the snail darter's "critical habitat." Notwithstanding the near completion of the multimillion-dollar dam, the Secretary issued a regulation, in which it was declared that, pursuant to § 7, "all Federal agencies must take such action as is necessary to ensure that actions authorized, funded, or carried out by them do not result in the destruction or modification of this critical habitat area." Respondents brought this suit to enjoin completion of the dam and impoundment of the reservoir, claiming that those actions would violate the Act by causing the snail darter's extinction. The District Court after trial denied relief and dismissed the complaint. Though finding that the impoundment of the reservoir would probably jeopardize the snail darter's continued existence, the court noted that Congress, though fully aware of the snail darter problem, had continued Tellico's appropriations, and concluded that "[a]t some point in time a federal project becomes so near completion and so incapable of modification that a court of equity should not apply a statute enacted long after inception to produce an unreasonable result. . . ." The Court of Appeals reversed the District Court's judgment and permanently enjoined completion of the project "until Congress, by appropriate legislation, exempts Tellico from compliance with the Act or the snail darter has been deleted from the list of endangered species or its critical habitat materially redefined." The court held that the record revealed a prima facie violation of § 7 in that TVA had failed to take necessary action to avoid jeopardizing the snail darter's critical habitat by its "actions." The court thus rejected the contention that the word "actions" as used in § 7 was not intended by Congress to encompass the terminal phases of ongoing projects. At various times before, during, and after the foregoing judicial proceedings, TVA represented to congressional appropriations committees that the Act did not prohibit completion of the Tellico Project and described its efforts to transplant the snail darter. The committees consistently recommended appropriations for the dam, sometimes stating their views that the Act did not prohibit completion of the dam at its advanced stage, and Congress each time approved TVA's general budget, which contained funds for the dam's continued construction. *Held:*

1. The Endangered Species Act prohibits impoundment of the Little Tennessee River by the Tellico Dam. Up. 17–37.

(a) The language of § 7 is plain and makes no exception such as that urged by petitioner whereby the Act would not apply to a project like Tellico that was well under way when Congress passed the Act. Pp. 17–19.

(b) It is clear from the Act's legislative history that Congress intended to halt and reverse the trend toward species extinction—whatever the cost. The pointed omission of the type of qualified language previously included in endangered species legislation reveals a conscious congressional design to give endangered species priority over the "primary missions" of federal agencies. Congress, moreover, foresaw that § 7 would on occasion require agencies to alter ongoing projects in order to fulfill the Act's goals. Pp. 19–31.

(c) None of the limited "hardship exemptions" provided in the Act would even remotely apply to the Tellico Project P. 32.

(d) Though statements in appropriations committee reports reflected the view of the committees either that the Act did not apply to Tellico or that the dam should be completed regardless of the Act's provisions, nothing in the TVA appropriations measures passed by Congress stated that the Tellico Project was to be completed regardless of the Act's requirements. To find a repeal under these circumstances, as petitioner has urged, would violate the "cardinal rule . . . that repeals by implication are not favored." *Morton* v. *Mancusi*, 417 U.S. 535, 549. The doctrine disfavoring repeals by implication applies with full vigor when the subsequent legislation is an appropriations measure. When voting on appropriations measures, legislators are entitled to assume that the funds will be devoted to purposes which are lawful and not for any purpose forbidden. A contrary policy would violate the express rules of both Houses of Congress, which provide that appropriations measures may not change existing substantive law. An appropriations committee's expression does not operate to repeal or modify substantive legislation. Pp. 33–37.

2. The Court of Appeals did not err in enjoining completion of the Tellico Dam, which would have violated the Act. Congress has spoken in the plainest words, making it clear that endangered species are to be accorded the highest priorities. Since that legislative power has been exercised, it is up to the Executive Branch to administer the law and for the judiciary to enforce it when, as here, enforcement has been sought. Pp. 37–39.

549 F. 2d 1064, affirmed.

Burger, C. J., delivered the opinion of the Court, in which Brennan, Stewart, White, Marshall, and Stevens, JJ., joined. Powell, J., filed a dissenting opinion, in which Blackmun, J., joined. Rehnquist, J., filed a dissenting opinion.

Mr. CULVER. While the committee found in its hearings that much controversy still surrounds the Tellico Dam case, the case is the type of Federal action which should be eligible for review by the Endangered Species Committee established by this bill and given appropriate consideration for an exemption under the new review process mandated in this legislation.

Testimony received by the committee indicates that a substantial number of Federal actions currently underway appear to have all the elements of an irresolvable conflict within the provisions of the act. This number may increase significantly in the future as the Fish and Wildlife Service continues to list additional species and critical habitats.

As I mentioned, some flexibility is needed in the act to allow consideration of those cases where a Federal action cannot be completed or its objectives cannot be met without directly conflicting with the requirements of section 7.

The bill requires that when conflicts with the Endangered Species Act are known or shown or should be known, an agency must consult immediately with the Fish and Wildlife Service and exhaust all reasonable avenues for eliminating the conflict. If this consultation process is unsuccessful in resolving the conflict, the bill provides a further review process in section 7(e) to address the conflict and resolve it.

The bill sets up a seven-member Endangered Species Committee composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of the Smithsonian Institution. The Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, and the Governor of the State in which the action is located. The Marine Mammal Protection Act gives responsibility for protecting certain endangered and threatened species to the Secretary of Commerce.

For cases in which the conflict before the Endangered Species Committee involves such a species, the Secretary of Commerce is required to concur with the Secretary of the Interior before that vote is cast.

The bill was amended by the committee to add the Governor of the State affected by the proposed action as a voting member of the Endangered Species Committee. The purpose of this addition was twofold. First, it was considered important that an elected official be a member of the Endangered Species Committee. Second, there was a perceived need to have someone on the Endangered Species Committee who is in touch with and understands the needs and desires of those persons close to or dependent on the Federal activities which would be the subject of the exemption application. The State Governor met both of these requirements.

If a case should occur in which more than one State is affected by the proposed action and legitimately involved in the outcome of the review process, all appropriate Governors may take part in the Endangered Species Committee work and discussions. For purposes of the decision regarding an exemption, however, the several States shall have collectively only one vote. The Governors will therefore determine among themselves how the single State vote should be cast.

The Endangered Species Committee can carry on business only when all seven members or their designated representatives are present.

In order to grant such an exemption at least five of the seven members must agree that the criteria listed in subsection (e) of this section are met, and vote in favor of such an exemption. A member may not delegate his or her vote to any other person; in the event one of the members is unable to be present at the time a vote is taken, he or she must transmit the vote in writing to the chairman of the Endangered Species Committee.

When an agency believes it has encountered an irresolvable conflict with the act which cannot be resolved through consultation with the Fish and Wildlife Service or the National Marine Fisheries Service (NMFS), that agency may petition the Endangered Species Committee for relief. The Fish and Wildlife Service—or when appropriate the Fish and Wildlife Service in consultation with the National Marine Fisheries Service—would have 30 days to respond to the agency's petition and give its views as to whether the consultation process required by section 7 had been fully conducted.

After reviewing the response of the Fish and Wildlife Service and other relevant information, the Endangered Species Committee would decide whether or not the action should be considered for an exemption. No action could be so considered unless the Endangered Species Committee determined: First, that the requirements of the section 7 consultation process had been met; second, that there had been a reasonable and responsible effort to resolve the conflicts and that the Federal agency requesting the exemption has made, subsequent to the initiation of consultation no irreversible or irretrievable commitment of resources which forecloses the consideration of modifications or alternatives to the action; and third, that an irresolvable conflict does indeed exist. If the Endangered Species Committee makes positive determinations on each of these matters it would then conduct hearings and receive public testimony on whether an exemption is warranted.

Within 180 days after the Endangered Species Committee first received the agency's petition and the Fish and Wildlife Service's response, the Endangered Species Committee must publish in the Federal Register its decision as to whether the action should be exempted, modified, or terminated. No project could be exempted, or exempted with modifications unless the Endangered Species Committee determines that there is no reasonable and prudent alternative to such action, that it is of regional or national significance, and that its benefits clearly outweigh the benefits of alternative courses of action that are consistent with conserving the species or its critical habitat, and that the action is in the public interest.

In reviewing available alternatives to the action under review, the committee would be charged to examine the benefits of all available alternatives, not simply those which are within the agency's jurisdiction or are consistent with the original project objectives.

After deciding that some additional discretion to resolve conflicts was a necessary addition to the present provision of the Endangered Species Act, the committee considered a number of options on how to introduce this discretionary authority into the present law. Of these options an Endangered Species Committee was chosen as that one best suited to make necessary balancing decisions regarding conflicts. This committee concept was employed because it seemed to offer the involvement of the broadest array of expertise and the greatest potential for a balancing of viewpoints concerning all the alternatives to be considered.

The committee hearings indicated that the requirements of section 7 might also conflict with a number of administrative processes; for example, Federal licensing and permitting of private activities. If a Federal agency, in carrying out an administrative function of this type determines, after appropriate consultation with FWS or the National Marine Fisheries Service, that a conflict with the act is irresolvable, the agency can petition for an exemption under the provisions of section 7(e). This approach provides relief for both the party who applied for the license or permit and for the Federal agency who might, except for the requirements of the Endangered Species Act, be disposed to approve the license or permit request. This is a reasonable policy for responding to this type of Federal action which might occur on private or Federal lands.

The basic premise of S. 2899 is that the integrity of the interagency consultation process designated under section 7 of the act be preserved. Many, if not most, conflicts between the Endangered Species Act and Federal actions can be resolved by full and good faith consultation between the project agency and FWS or NMFS, as appropriate. Only in those instances where the consultation process has been exhausted and a conflict still exists should the Endangered Species Committee consider granting an exemption for a Federal action.

In order to assure this intent, S. 2899 sets up a two-step process by which Federal projects can be considered for an exemption. In the first step, the Endangered Species Committee must decide if the application is ripe for review. Specifically, it would have to find first that the requirements of the consultation process described in section 7(a) had been met. These requirements are specifically set forth in regulations promulgated by FWS and NMFS in CFR 50, chapter IV, part 402. Second, the Endangered Species Committee must determine that a reasonable and responsible effort had been made by both parties to resolve the conflict once it is known to exist and that, subsequent to the initiation of consultation, the construction agency had made no irreversible or irretrievable commitment to resources which forecloses the consideration of those modifications or alternatives to such action which are consistent with preserving the species or its critical habitat.

Under the current section 7 regulations, Federal agencies have a responsibility to identify activities or programs which they undertake that may affect listed species or their critical habitat and to request consultation with the services concerning those activities or programs. Thus, the consultation process must be initiated at that point in the implementation of the act where the Federal agency first recognizes that the activity may have a detrimental effect on a species or its critical habitat.

Finally, in the process of deciding whether to review fully an action for an exemption the Endangered Species Committee would be required to determine that an irresolvable conflict does indeed exist. The term irresolvable conflict is defined as an action authorized, funded or carried out by a Federal agency where, after consultation as required in section 7, completion of such action would jeopardize the continued existence of an endangered or threatened species or result in the adverse modification or destruction of its critical habitat. An irresolvable conflict cannot be found to exist unless the project agency had thoroughly reviewed all modifications and alternatives to the action that are within its jurisdiction and consistent with the objectives of the project, but has determined that even with the adoption of such modifications or alternatives the activity cannot be completed without adversely affecting a listed species or critical habitat.

CRITERIA

If the Endangered Species Committee determines that the initial criteria for review have been met by the Federal agency making the application, the Federal action in question is appropriate for further consideration. The review process must be accomplished within 180 days after the receipt of the petition for an exemption and response from the Fish and Wildlife Service. The final determination must be made on the record and thus must be accompanied by a formal hearing process.

In addition, the final decision to grant an exemption must be based on criteria set forth in section 7(e)(2) as follows:

1. There is no reasonable and prudent alternative to such action.
2. The action is of national or regional significance.
3. The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest.

The bill also requires that during the review process, the Endangered Species Committee must address the benefits of all alternatives which might be available in lieu of the proposed action. This criterion makes it clear that the Endangered Species Committee must consider all options which might eliminate harm to the species, independent of the stage of project completion. As a project approaches completion, certain alternatives to the proposed action may not be reasonably or prudently available as options. It is also clear that the earlier in the progress of a project a conflict is recognized, the easier it is to design an alternative consistent with the requirements of the act, or to abandon the proposed action. It may be feasible to utilize resources already expended or lands acquired for a proposed action to carry out alternatives, such as the development of parks or wildlife refuges, which are unrelated to the initial project. The Endangered Species Committee should apply this standard of reasonableness in asserting the availability of alternatives to any action before them for review.

The criteria in section 7(e)(2) should not be viewed as a limitation on those factors the Endangered Species Committee might deem appropriate for use in making the final decision. It should, however, give some guidance as to those elements that the Congress believes are essential to a reasonable decision in cases of conflicts, along with some idea of what emphasis should be given these elements in any decision.

It is particularly difficult to assess exactly what facts are or will be important when viewing a particular species within the subsection (e) process. Clearly such genetic, recreational, aesthetic, historic, and scientific values of the affected endangered or threatened species should be given weight in any final decision.

In the balancing process the Endangered Species Committee is not expected to weigh simply the importance of a species against the value of a Federal action. The criteria expressly mandate that the balancing which is to take place is between the benefits of a proposed Federal project and the benefits of alternative courses of action which will not result in harm to the species or its critical habitat.

Although the balancing process is difficult the Endangered Species Committee should note that the decision to allow the extinction of a species or destroy all or parts of its critical habitat must not be taken lightly and great care must be applied in trying to decide finally, in cases of conflict, what future course of action is in the public interest.

The bill provides authority for the Endangered Species Committee to issue subpenas for the attendance of witnesses and the production of relevant papers, books, and documents. The authority should be used with restraint, when necessary to obtain information material to an exemption decision.

In oversight hearings concerning the Endangered Species Act the committee also received testimony from organizations representing zoos. These witnesses were skeptical of the necessity for the stringent and burdensome process developed by FWS for regulation of their captive bred endangered and threatened species. The committee advises the Service to reexamine these regulations and the rationale upon which they are based in light of this testimony, and to make every effort to insure that only those regulations which result in real benefits for wild populations of endangered and threatened species are retained. In any event, every effort should be made by the Service to reduce the amount of paperwork and time invloved in this regulatory process.

The committee notes favorably the Fish and Wildlife Service announcement in the April 14, 1978, Federal Register that they are examining the possibility of reclassifying captive endangered species to a less restrictive status under the Endangered Species Act. The committee agrees that some distinctions ought to be made between the regulatory processes relating to captive endangered species so that only those regulations that can be reasonably expected to enhance the protection of endangered species be retained.

The committee also received testimony on a related issue, the manner in which the Endangered Species Act affects scientific pursuits, particularly work carried on in museums. In discussions with members of the scientific communities the Fish and Wildlife Service has agreed to reexamine its present regulations. The permit procedures in this regard badly need to be streamlined.

Large amounts of time and money have been committed to compliance with these regulations, although little may be accomplished by control of museum specimens. There is little evidence that such controls have any appreciable effect on existing populations of endangered species.

The committee believes that a distinction should be made between regulation of legitimate scientific pursuits and commercial activities involving endangered species, and that regulations should be promulgated which do not necessarily impede or obstruct legitimate scientific inquiries.

The committee requests that the Fish and Wildlife Service study upgrading the efforts of the Customs Service activities and other alternatives for monitoring and protecting endangered species and report its findings back to the committee within a reasonable time.

Mr. President, I think my colleagues will agree that the Committee on Environment and Public Works has completed a comprehensive review of this enormously complicated subject. Let us hope that the deliberations on this bill are conducted so as to resolve these issues with careful consideration of the scientific, ethical, and social implications of the decision we make.

Mr. RANDOLPH. Mr. President, I am a strong supporter of public works projects. I believe that in providing jobs, energy, water, and other life sustaining needs, they are truly beneficial to the American people. I am an equally strong supporter of environmental protection efforts. Clean air, safe drinking water, and the conservation of our fish and wildlife resources are all essential to the Nation's health and welfare.

As chairman of the Senate Committee on Environment and Public Works, I have been closely associated with legislation regarding both of these important national priorities. My experience is that economic progress and environmental protection are generally compatible.

This is the case with the Endangered Species Act. Hundreds of potential conflicts between endangered species and Federal projects, such as dams and highways, have been averted by careful planning and by diligent consultation and cooperation between project agencies and the Departments of the Interior and Commerce. However, the recent Supreme Court decision in Tennessee Valley Authority against Hill demonstrates that the 1973 law is not flexible enough to provide for a balancing of equities in those few instances where endangered species and Federal actions come into irresolvable conflict.

This is why the Committee on Environment and Public Works approved S. 2899. This legislation continues the program and creates a seven-member Endangered Species Committee to review irresolvable conflicts which develop between endangered species and Federal projects. If the project meets criteria set forth in the bill, the committee could exempt it from compliance with the act. Since this panel includes individuals with expertise in both environment and development matters, its decisions are likely to be balanced and fair.

Furthermore, S. 2899 is intended to encourage agencies to work diligently toward resolving conflicts, since to qualify for an exemption an agency must demonstrate that it had made a good faith effort in this regard. This requirement will strengthen the consultative process currently mandated under the law.

I consponsored S. 2899 when it was introduced in April, not because I supported its every provision, but because I felt that it was essential for the Senate to have a vehicle for discussing the endangered species issue. After debating it carefully and extensively and making improvements in the original text, the committee unanimously approved a bill which, in my view, provides a reasonable and practical solution to a very difficult problem.

I commend my able colleagues Senator Culver, Senator Wallop, and Senator Baker, for the leadership and knowledge they have displayed in the formulation of this measure. Their efforts have been criticized both by those who wish to see no change in the act and by those who would like to see it weakened significantly. Due to their efforts, the committee has been able to approve a bill which provides effective protection for endangered species without unduly impeding essential development activities.

Senator Stafford, our ranking minority member, also contributed to our discussions and helped us to fully understand the issues in this legislation.

Mr. President, S. 2899 has my strong support. I urge my colleagues to give it theirs as well.

Mr. Culver. Mr. President, I ask unanimous consent that the amendments of the Committee on Environment and Public Works to S. 2899, the Endangered Species Act amendments of 1978, be agreed to en bloc, and that the bill as thus amended be considered as original text for the purpose of further amendment.

The Presiding Officer (Mr. Bayh). Is there objection? The Chair hearing none, it is so ordered.

Mr. Wallop. Mr. President, first I would like to thank the chairman, the Senator from Iowa (Mr. Culver) for his thorough presentation explaining the history of the Environment and Public Works Committee's recent work on the Endangered Species Act, and express to him my respect and admiration for what I thought was a responsible and rather courageous step in becoming one of the coauthors of the so-called Baker-Culver amendments that we will be speaking of here.

I think the committee, and particularly Senator Culver in his leadership, took the whole matter seriously, and took into account both the problems of endangered and threatened species and the problems of living in this workaday world, and have come up with what I think it has been a privilege to work with them on, in this whole affair.

Mr. Culver. Mr. President, will the Senator yield?

Mr. Wallop. I yield.

Mr. Culver. I was remiss in not also expressing, at the outset, my very genuine appreciation for the tireless, conscientious, and valuable contribution that the Senator from Wyoming, in his role as ranking minority member of this subcommittee, has contributed toward the formulation of this legislation; and I want him to know how very much I appreciate those efforts, and how very greatly I depend upon his continued counsel and leadership in this area. I again want to say how sorry I am that I failed to acknowledge that on the occasion of my general presentation.

Mr. **Wallop**. I thank my colleague, and assure him that I had not noticed it.

Mr. **Randolph**. Mr. President, will the able minority manager of the bill yield?

Mr. **Wallop**. I am happy to yield to the chairman of the committee, the Senator from West Virginia (Mr. Randolph).

Mr. **Randolph**. This is a serious subject, but in a lighter vein, I recall that someone asked me recently about the jurisdiction of the Environment and Public Works Committee. I explained that we had three new subjects. One is fish and wildlife, the second is a small item—nuclear regulation—and the third is endangered species.

I said, "I understand the latter, because I am a candidate for reelection."

Mr. **Wallop**. The unfortunate thing is that the committee that has sway over the fate of those endangered species is a good deal larger than seven Cabinet members.

I thank the distinguished chairman.

Mr. **Culver**. I appreciate the observations of the able chairman of the Committee on Environment and Public Works. I am confident, however, that the voters of the State of West Virginia are sensible and fully aware of his service to them. They will not permit him to become an extinct species.

Mr. **Wallop**. Mr. President, I support this legislation as it lies before us, although, as in any legislation, nothing is engraved in marble. It is a living document, subject to amendment.

The committee held 6 days of hearings addressing many of the issues covered in the act, and spent 4 days marking it up in an effort to resolve some of the very complex and emotional issues which have arisen on this subject. I believe the final version of the committee bill, S. 2899, to be a reasonable response to some of the legitimate criticism which has been voiced over the law, but a response which will continue to afford strong and necessary protection to endangered and threatened species.

Mr. President, the committee received a considerable amount of conflicting information regarding the impacts which the act as implemented is having or might potentially have. After careful consideration of this information, the committee has made an assessment of what the facts actually are, and has designed a committee bill which addresses those impacts for which a legislative solution is deemed appropriate. However, I would like to note here that many of the problems which have been brought to the committee's attention over this law have been largely administrative problems which can and should be resolved by a more careful and reasonable administration of the act. Certainly it is no easy task to carry out the considerable mandates of this law, and I commend many of the dedicated people in the Federal agencies and especially the U.S. Fish and Wildlife Service who bring ability and common sense to this job. Nevertheless, the committee received numerous reports of various administrative decisions and policies which would not seem to be in the best interests of the endangered or threatened species, the State agencies with responsibility to manage resident wildlife, or the act itself. For example, a cattleman from Minnesota testified before the committee about how eastern timber wolves, which were at that time classified as endangered by the U.S. Fish and Wildlife Service, were attacking his cattle on private land adjacent to national forest lands, causing him obvious economic hardship. However, the USFWS interpreted the law in such a way that this man was rendered powerless to do anything to protect his private property, even so much as to shoo away the wolves, which would constitute "harassment" under USFWS interpretation of the law. I understand that since that time the wolf has been downlisted to a threatened category, which allows for more management options.

However, it is unreasonable to suppose that a man must stand in silence while his livelihood is being devoured by any species, threatened or otherwise, particularly inasmuch as those very people had no compensation contemplated in their behalf by those of us in the process of protecting these threatened or endangered species.

Similarly, I was often disappointed to hear of many instances of less than model cooperation by the Fish and Wildlife Service in working with State game and fish agencies. The Florida Game and Fresh Water Commission testified about the problems that agency was having with alligators in southern Florida when it became apparent that alligator populations were increasing at a very rapid rate. The agency petitioned to have the alligator delisted from endangered to threatened, but experienced silly delays in the process, and in the meantime received over 10,000 complaints from private citizens concerning alligators in their swimming pools, canals, and backyards. The agency representatives testified that biologically the alligator never did qualify as endangered, but that its listing as such was an example of emotional rather than biological reason dictating the species to be listed in the first place.

In another example, the Arizona Game and Fish Department testified that passage of the 1973 act and its implementation hindered its State program for a period of time, because of the restrictions that were imposed upon the State with regard to taking and transportation of endangered species. When the act passed, the prohibitions inherent in the law put a stop to the State programs for two species of fish, the Gila topminnow and the Arizona trout. The program necessitated the capture of fish in the streams and movement to hatcheries for propagation purposes back and forth across State lines. This was not possible without permits from the Fish and Wildlife Service, and as a result the program ground to a halt until bureaucratic redtape could be sliced through. Arizona representatives also stated their concern over seeming Fish and Wildlife Service indifference to Arizona recommendations regarding listing on the International Trade in Endangered Fauna and Flora Appendices. This is, of course, one of several international treaties implemented by the passage of the 1973 act. The Arizona Game and Fish Department recommended removal of the Mearns quail and several other Arizona species from appendix II, maintaining that there is no evidence that such species have ever featured in international trade or are even threatened at all by hunting, trade, or anything else. The department testified it had devoted some $200.000 to a comprehensive study of the Mearns quail, and that there had been no overall downward trend in population. Yet that department felt its recommendations to remove it from appendix II seemed to have been ignored by the Fish and Wildlife Service.

In the interest of the cooperation which the Endangered Species Act clearly calls for, and which Federal administrators have stressed is vital for effective implementation of the law, I would submit that the opinions of State game and fish agencies should be afforded the greatest consideration and respect. Furthermore, I would hope the Fish and Wildlife Service would streamline its procedures to delist as well as list species, and put strong emphasis on examining qualified supporting data. Finally, that agency should give just as much emphasis on recovery and eventual delisting of species as the initial listing again with State consultation.

I would like to address several other issues relating to this legislation which are of particular importance to me. The first is the committee's examination of the effects of the 1973 act upon certain endangered and threatened raptor populations. For years biologists, conservationists, and falconers have been working to reproduce raptors through propagation in captivity, and have been successful in breeding both endangered and nonlisted birds in captivity. It is worth noting that modern falconers were among the first to detect a significant decline in wild populations, because of pesticides in the environment and initiate captive breeding efforts to avoid extirpation of such species.

In their work emphasis has been placed on raptors which are now listed as endangered under the Endangered Species Act. However, prohibitions listed in section 9 of the law against commerce and other activities have impeded their breeding activities. Section 9 of the 1973 law allows for the exclusion from the act of species held in captivity at the time of the effective date of the act. Whether progeny of such stock would also be exempted from the prohibitions of the act has also been debated. Senator Tunney, the floor manager of the 1973 act and sponsor of this provision, wrote, in a letter to Senator Culver, that the clear intent of section 9 was to exempt the offspring of pre-act falcons from the act. Therefore, it is the intent of committee that the domestic captive-produced progeny of any raptor which was legally held prior to enactment will also be exempt from the provisions of the act, even if such progeny were produced after December 28, 1973. In order to encourage breeding of raptors in captivity, the domestic captive-produced progeny of raptors considered to be endangered, but legally taken from the wild after that date shall be considered for legal purposes in a like manner as the progeny of raptors captured below 1973. The committee believes this will alleviate some of the human pressures on wild raptor populations, will increase genetic diversity in captive populations, and will encourage captive production of raptors for conservation, scientific, and breeding purposes. If such domestic, captive-produced raptors are intentionally returned to a wild state, such raptors will be fully protected under the act. Finally, the Secretary of the Interior may require owners of exempted raptors to keep records and require banding to distinguish them from wild birds. However, such recordkeeping should not unnecessarily duplicate records already required.

On another topic, the committee has been concerned over the Fish and Wildlife Service's policy to treat areas to extend the range of an endangered species the same as areas critical for the species' survival.

Other committee members and I have been especially concerned about the implication of this policy in the case of the proposed critical grizzly bear habitat in a large area of Wyoming, Idaho, and Montana. Much of this area is not critical to the continued existence of the grizzly bear, but is instead proposed so that the population within truly critical habitat can expand. The goal of expanding existing populations of endangered species in order that they might be delisted is understandable. However, this process does greatly increase the amount of acreage in the critical habitat designation, which is, of course, subject to the regulations and prohibitions which apply to critical habitats.

The committee felt that the rationale for designating and protecting areas for range extension the same as those for truly critical habitat ought to be reexamined by the Fish and Wildlife Service, and that there is little or no reason to give both types of areas the same status with the same regulations. Therefore, the committee has directed the Fish and Wildlife Service to examine this ambiguity in its regulatory process for critical habitat designations, and to report back to this committee before a final decision on the grizzly bear designation is made.

In preparing this legislation, the committee review found that operation of the 1973 act depends principally on two important elements. The first is the process of identification and designation of endangered and threatened species. Due to shortages in personnel and funding it there have been time delays in fish and wildlife consideration of proposed designations, which have led to unnecessary expense and delay for many. The committee hopes the funding contained in this reauthorization legislation will be adequate to reduce or eliminate much delay and confusion in the future.

The second important element of the act is the consultation process mandated by section 7 of the act. The success of the consultation process seemed to be the single point on which there was most conflicting testimony in the hearings. The committee found after reviewing the facts that the consultation process has been successful in resolving many conflicts, both informal ones by phone and the approximately 200 formal consultations which have occurred. However, it appears to the committee that there may be a number of unresolved consultations which will prove to be irresolveable in the future, and it is this category of projects which became the focus of attention in the controversy involving the act. While there may not be an overwhelming flood of irresolvable cases in the future, the committee felt that the number could be sufficient in view of all facts to require including a mechanism in the law for resolving clashes between the Endangered Species Act and other conflicting national priorities which prove to be truly irresolvable. Therefore, the committee amendment created such a mechanism through an interagency review committee, the Endangered Species Committee.

Briefly, under the amendment a Federal agency believing a conflict between its activities and the act is irresolvable through the consultation process could petition this committee for relief. The Fish and Wildlife Service would have 30 days to respond to the petition. After reviewing this response and providing for formal public hearings, the Endangered Species Committee has the authority to decide if the proposed activity should proceed as planned, be modified, or terminate. In order to waive the requirements of section 7, five of the seven committee members would have to determine that there is no reasonable and prudent alternative to the project, that it is of regional or national significance, and that the benefits of the project clearly outweigh alternatives to the project which are consistent with the requirements of the act.

The committee amendment should not be interpreted as creating a broad loophole through which large numbers of Federal activities can escape the requirements of the Endangered Species Act. Rather it should be viewed as an attempt to inject a modicum of flexibility into the law to see that some resolution mechanism can balance the need to protect and manage endangered species while considering other legitimate national priorities. The committee fully intends that Federal agencies continue to make every possible effort to avoid conflicts, and that the agencies participate fully in consultation processes. In those relatively few instances where an irresolvable conflict arises, the mechanism in the committee amendment should result in expedient and reasoned resolution of the issue, so the fate of the agency's actions can be determined without long delays and increased expense.

One final point which I would address regarding the committee's amendment to section 7 of the act concerns the speed with which the Endangered Species Committee can resolve conflicts which arise. The timing of the Endangered Species Committee action depends on two factors. The first is the expediency with which the committee can reach a final decision within the administrative framework of the amendment. The second factor is the potential for length litigation on the decision made by the committee.

The amendment to section 7 in S. 2899 addresses both of these factors. The amendment places a 180-day limitation on the time available for a final decision by the committee for an exemption. The Environment and Public Works Committee feels that when a Federal agency makes application for an exemption with the Endangered Species Committee, the application should contain all information pertinent to the exemption, particularly information on the Federal activity as proposed and on all the available alternatives to such proposed action. These factors, along with the rationale for why these alternatives have been rejected as viable in the formal consultation carried out between the Fish and Wildlife Service and the applying agency, should enable the Endangered Species Committee to reach a final decision within the time frame set up by the amendment.

The Environment and Public Works Committee also tried to avoid excessive litigation in such decisions. The process in the amendment contains two steps. First, the Endangered Species Committee has to determine if the Federal activity meets the basic requirements to enter the committee review procedures—principally that an "irresolvable conflict" does in fact exist. If the committee grants the review of the application, this decision is viewed by the Environment and Public Works Committee as preliminary to its final determination on whether to grant an exemption, and should be viewed as part of the final decision or the exemption, and should not be litigable except as part of litigation on the final decision to exempt.

If the Endangered Species Committee decides not to allow review of the application, this is of course a final decision by the committee and would be judicially reviewable.

The Environment and Public Works Committee is not seeking to make the decision of the Endangered Species Committee nonreviewable by those who disagree with them, but the committee is attempting to insure that litigation of the decision is carried out in a single court case covering the entire basis for a final Endangered Species Committee decision rather than in multiple litigation procedures dealing with issues relating to preliminary decisions as separate from final findings of the Committee concerning an exemption.

Mr. President, I yield to the distinguished ranking member of the committee (Mr. Stafford).

Mr. Stafford. Mr. President, I appreciate the distinguished Senator from Wyoming yielding to me, and I compliment him and the manager of the bill (Mr. Culver) for the work they have done on this important piece of legislation. I am, therefore, somewhat embarrassed to find myself rising in opposition to the changes which have been proposed to the Endangered Species Act.

It is true, as Senator Culver pointed out, that the vote to report the bill to the floor of the Senate was unanimous. While in opposition to the proposal for changes I felt the matter should come to the attention of the Senate and be decided here. I did oppose in committee some of the changes which are now incorporated in the bill pending before us.

Mr. President, I rise in opposition to the changes being proposed to the Endangered Species Act.

The record of implementation of the present law during the last 4 years provides ample evidence that the law is working well and that there is adequate flexibility in the administrative process contained in existing law.

There have been more than 4,500 consultations covering a broad range of Federal activities carried out under the requirements of the law. In the overwhelming majority of those consultations, no conflict with the requirement of the law was found to exist. In those few cases where conflicts did arise, each of those conflicts was resolved—with the lone exception of the Tellico Dam project of the Tennessee Valley Authority.

During the extended debate and deliberations conducted by the Committee on Environment and Public Works on this matter, I often expressed my opposition to the changes that have been proposed by the committee. I do not think we should tamper with the present law. There is no need to change the law.

The present process used to implement the law is working well. It is my understanding that the most visible conflict with present law—that posed by the Tellico Dam project—was a creature of the lack of consultation, rather than a failure of the consultation.

Indeed, that conflict may be resolved by a new attitude on the part of the project's managers. That attitude, had it been expressed earlier in the life of the project, may have led to a solution of the problem, rather than to deadlock.

The Department of Interior tells us the process is working and there is no need to change the present law. Surely, as the Fish and Wildlife Service gains more experience in implementing the consultation process and finds ways to improve the decisionmaking under section 7, there will be even less cause for conflict.

I urge my colleagues to allow the present law to stand, so that the policies and machinery designed to protect our Nation's endangered species can go ahead as they were developed by the Congress in 1973.

In conclusion, I urge my colleagues in the Senate to reject the proposed amendments offered by the committee and to allow the Endangered Species Act to remain as is—an important and effective law that protects the interests of all of us who occupy our Nation at the present, as well as those still unborn who will occupy our Nation in the future.

Mr. BAKER. Mr. President, will the distinguished Senator from Wyoming yield me 5 minutes?

Mr. WALLOP. I am happy to yield the distinguished minority leader 5 minutes.

Mr. BAKER. Mr. President, I rise in support of the provisions of S. 2899 as reported.

My fellow members of the Committee on Environment and Public Works are to be congratulated for their diligent efforts to design the responsible legislation which is before us today. It addresses each of the difficult and controversial issues which have arisen concerning the implementation of the Endangered Species Act. I would particularly like to compliment the distinguished Senator from Iowa (Mr. Culver) and the distinguished Senator from Wyoming (Mr. Wallop), the chairman and ranking member of the Resource Protection Subcommittee, for their leadership during consideration of these issues.

As I am sure most of my colleagues are aware, the landmark case concerning the act's implementation occurred within my home State of Tennessee. On January 31 of last year, the Tellico Dam, located on the Little Tennessee River, was halted at an advanced stage of construction by the decision of the Sixth Circuit Court of Appeals in Hiram Hill et. al., against TVA. The court's decision interpreted section 7 of the act such that this multipurpose water project, which is over 90 percent complete, must be stopped if the snail darter or its critical habitat were to be harmed. Mr. President, I feel that this is certainly not what Congress intended and hope that our efforts here today will result in a clear mandate that other national important interests must be balanced within the decisionmaking process in the act.

The sixth circuit's decision prompted many in Congress, including myself, to request a review of the act's implementation. The Subcommittee on Resource Protection accepted these requests and responded by holding 4 days of hearings on the Endangered Species Act during July of last year. While these hearings covered a broad range of topics concerning the act, the impacts which the act had had or will have on Federal agency activities quickly became the focal point of the subcommittee's attention.

The hearings generated some interesting findings on this issue. It became clear that, with regard to Tellico, the act as written was, indeed, inflexible and would not permit completion of this project despite the commitment of resources and potential benefits to the public that might be derived from such project. More interesting, however, was the subcommittee's finding that there were a number of other major Federal activities in the same situation as Tellico and that this number would likely increase as implementation of the act proceeded.

The recent decision of the U.S. Supreme Court concerning Tellico underscores the need for the Congress to address the issue and inject some additional flexibility into the act.

After lengthy consideration of these facts, the subcommittee has proposed a legislative alternative for resolution of conflicts between the Endangered Species Act and Federal activities. Of all the options reviewed, the approach taken in S. 2899 seemed best to meet the objective of the subcommittee: Providing a broad, flexible process for reviewing the impact of Federal activities on endangered species. The process has the ability to reasonably balance other legitimate national objectives with the need to protect and manage the Nation's endangered species. I agree with the choice made by the Committee on Environment and Public Works on this matter and urge each of my colleagues to support this act in essentially the form in which it was reported.

Mr. SCOTT. Mr. President, it appears that the Endangered Species Act has been brought more acutely to the public view, as suggested by the distinguished Senator from Tennessee just a moment ago, by the recent Supreme Court decision in the Tennessee Valley Authority against Hill. I have read both the decision of the court and the dissenting views.

It appears from a reading of the case that the Court has found that the present law is rigid; but under our system of government, in which the three branches have differing functions, any changes in the law must be brought about by the Congress and whether the law is good or bad is not for the Court to say.

Let me quote the final short paragraph of the Court decision:

> We agree with the Court of Appeals that in our constitutional ssytem the commitment to the separation of powers is too fundamental for us to preempt a congressional action by judicially decreeing what accords with "commonsense and public weal." Our Constitution vests such responsibilities in the political branches.

Mr. President, the Court having put the onus directly upon the Congress to change the law, if any changes are necessary, I believe we should look very carefully at the existing law and the Committee bill. The measure before us is an apparent effort to reduce the inflexibility of the act to some extent by constituting a Cabinet-level endangered species committee that would have the power to review an application submitted to it to grant an exception from the act in instances of national or regional significance where there is no reasonable or prudent alternative and the benefits of such action clearly outweigh the benefits of alternative courses.

It does not appear, however, that the proposal grants any relief in local situations or gives any discretion to those in the executive branch charged with the responsibility of administering the present act. It would seem reasonable, therefore, to amend portions of the 1973 act to permit the general welfare of mankind to be considered along with the protection of species of fish, wildlife, and plants.

During the Independence Day recess, my wife and I visited the Natural Bridge of Virginia. We spent the night there and observed what is said to be one of the seven natural wonders of the world—a natural bridge 215 feet high, 40 feet thick, an arch with a span of 90 feet between its walls; certainly a wonder of nature regardless of its ranking among other works of nature. During the evening, we sat beneath the bridge and listened to a drama based upon the Book of Genesis regarding the creation. It might be pertinent to read a portion of the story of creation included in the drama, beginning at verse 26, chapter 1 of the Book of Genesis:

> And God said, let us make man in our image, after our likeness: And let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepth upon the earth. So God created man in his own image, in the image of God he created him; male and female created he them. And God blessed them, and God said unto them, be fruitful, and multiply, and replenish the earth, and subdue it: And have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.

Now, Mr. President, some will accept the biblical story of the creation, while others will find it in conflict with scientific knowledge and the theory of evolution but everyone listening to this drama must have been awed by the presentation taken from Genesis while sitting beneath this natural phenomenon.

After reading the 1973 Endangered Species Act, it seems apparent that the Congress concentrated upon the protection of fish, wildlife, and plants in a most general and constructive manner. However, it also seems apparent that we—I say "we," because I was a Member of the Senate and this passed on a rollcall unanimous vote—neglected to give sufficient emphasis to our own welfare, to the fact that mankind is superior to animal and plant life, that both are under the dominion of man. Of course we should protect fish and wildlife in every proper way, and I would not suggest any other course, but in our stewardship over fish, wildlife, and plants, it does not appear reasonable to jeopardize the welfare of mankind, the society we have created, the economic, social, political, and cultural system we have developed over the years.

Let me read and share with my colleagues a small, short editorial from Grit newspaper.

I know that many of us are familiar with this paper that has existed for a long period of years. I am told by the Library of Congress that it has a national circulation of 1,259,458.

The editorial comment is entitled, "Excessive U.S. Regulation":

> Unreasonable federal regulations stifle progress. How many times has that been said? How many more times must it be said before the government begins to listen?
>
> Look what has happened to the over-regulated railroads. Look what is happening to the businesses and industries which must conform to rigid environmental safety rules even where no hazards exist. Look what is happening to private individuals who cannot even drive their cars three feet without being affected by a government regulation.
>
> Now comes one of the most ridiculous examples of over-regulation to date. A three-inch fish called a snail darter is preventing a new $119,000,000 dam in Tennessee from going into operation. Although the dam holds great potential for public benefit, Tennessee must yield to the snail darter because it is protected under the 1973 Endangered Species Act. It seems that a scientist discovered the presence of the fish after much of the construction on the dam had been completed. A Supreme Court ruling upheld the "rights" of the fish over the rights of Tennesseans.
>
> Blame Congress for this absurd situation. In its zeal to protect the environment and wildlife, it went too far. One can only be thankful that dinosaurs don't exist today, for Congress would probably seek to protect them too.

The time is long past for Congress to begin rescinding unreasonable rules and regulations which limit, rather than enhance, constitutional freedoms. Its time Congress began thinking first of the people it represents, instead of snail darters or ivory-billed woodpeckers.

Mr. President, I will read in the dissenting views by Mr. Justice Powell in the TVA against Hill case, a footnote on page 3, and I would like to share it:

Although the snail darter is a distinct species, it is hardly an extraordinary one. Even icthyologists—

Those who make a study of fish—

familiar with the snail darter have difficulty distinguishing it from several related species.

This is obtained from the record of the trial court, pages 107 and 131:

Moreover, new species of darters are discovered in Tennessee at the rate of about one a year; eight to ten have been discovered in the last five years.

That is also in the report of the trial in the district court:

All told, there are some 130 species of darters. Eighty-five to ninety of which are found in Tennessee, 40 to 45 in the Tennessee River system, and 11 in the Little Tennessee itself.

Since the Endangered Species Act attempts to preserve from extinction what the Supreme Court in the TVA case indicates covers every animal and plant species, subspecies, and population in the world needing protection—approximately 1.4 million full species of animals, 600,000 full species of plants, with some 200,000 that may need to be listed as endangered or threatened, with these figures increasing three to five times that number when subspecies and individual populations are counted. It would appear that the Congress has overextended itself and is endeavoring to perform an impossible task.

I requested the Congressional Research Service of the Library of Congress to provide information regarding what would happen to fish, wildlife, and plants in their natural state without the intervention of mankind.

It sometimes has been said that our industrial world has brought about jeopardy to our wildlife.

The memorandum refers to an article regarding the Shenandoah National Park by Napier Shelton and quotes in some detail the changes made in the area over a period of many millions of years. Then, Mr. William C. Jolly, analyst in the Environment and Natural Resources Policy Division, Library of Congress, states that:

The changes in landforms and in biological species and communities which occur naturally over time, are continuing ones. They are sometimes aided, sometimes directed to various degrees by the planned and the inadvertent actions of man. One need not go back milennia to detect significant changes, of course. Ecological conditions have changed markedly over the last few centuries.

He refers to other authorities, examines the question in more detail, again refers to the instructive booklet, "The Nature of Shenandoah," and concludes:

Shelton mused of the future of the Shenandoah:

"Taking a geological perspective, we can imagine all sorts of possibilities. The Blue Ridge may erode to virtually nothing and be covered again with water. Or it may be pressured upward into craggy peaks. Perhaps there is a long chance

> that lava will once again flow from great cracks in the rock. And changing climate may put entirely different vegetative clothes on the land. A warming trend could once again bring tropical forests, or cooling could bring glaciers from the north—perhaps this time to bury the Blue Ridge and wipe its biological slate clean. And who knows what new forms of life will evolve in response to the ever-changing environments?"
>
> Similarly we may muse of the futures of any or all other regions. We can be sure of but one thing: Change is natural and inevitable even if we may not know the exact nature or even direction of the changes which will occur.

The writer refers to an article entitled "Should We Save All Endangered Species?" appearing in an issue of the Academy of Natural Science of Philadelphia's Frontiers, written by George Constantz, in which he notes that some species are rare or may disappear because they "cannot evolve appropriate adaptations to an environment which is changing through natural courses." He then expresses the opinion that "man should not bear the moral burden to preserve species which will not evolve at an adequate rate or in the appropriate direction to keep pace with an evolving environment.

Mr. President, the purpose, of course, is to show that neither plants nor wildlife continue over the years in their identical form. There is an evolutionary change made which should not stop us from attempting to protect or delay the extinction of desirable fish, wildlife, or plants, but cause us to recognize that an absolute preservation in its present state of the more than 2 million species of plants and animals is not possible, and we should consider the welfare of people in determining the species to preserve.

Moreover, if we look at the act from the political or governmental point of view, we again find that it gives undue consideration to fish, wildlife, and plants over the welfare of people. Not only from the biblical, or evolutionary point of view is mankind superior but also from the political point of view. Our own Government exists to serve people. I do not believe anyone in this body would suggest that the equal protection clause of the 14th amendment applies to fish, wildlife, and plants, but even if it should be so applied, human species would be entitled to the protection now denied them under the Endangered Species Act. It does not appear reasonable that anyone would quarrel with the statement that people should have dominion, as genesis provides, over the fish of the sea, the fowl of the air, and every living thing that moves upon the Earth. Government exists only for the purpose of serving people and apparently this basic fact was not considered fully when we enacted the Endangered Species Act of 1973.

The major action bringing the Endangered Species Act to public attention, of course, was the TVA case involving the Tellico Dam project and the snail darter fish. However, the Endangered Species Act has caused concern in many other States, including Virginia. During both 1977 and 1978 in the southwestern part of our State, there was heavy rainfall within the three-fork tributary system of the Holston River that empties into the Tennessee Valley system. As a result, the river flooded on all forks and exceeded by several feet the projected 100 year flood plan established by the Tennessee Valley Authority. When we speak of a 100-year flood plan, we are thinking of the highest elevation that water will rise even once within a hundred years. There were two major floods last year and one this year in the same area, resulting in approximately $275 million worth of property damage and the death of four persons—not snail darters but people.

President Carter declared the Holston watershed a Federal disaster area on two of the three occasions, and funds were made available for emergency repairs, necessary cleanup, and removal of debris. It is understood that emergency work was designed to protect private homes, the majority of the manufacturers in a 16-country area—this is a rural area—and to minimize the consequences of future floods. The only work approved was that deemed necessary to protect private and public property. Representatives of the Federal Disaster Assistance Administration, Army Corps of Engineers, Virginia Office of Emergency Services, and the Virginia Commission of Game and Inland Fisheries were all in agreement that this work needed to be performed on an emergency basis.

However, the Fish and Wildlife Service of the Department of the Interior advised the Corps of Engineers that the Holston tributary was the habitat of several endangered and threatened species and on June 19 of this year, the corps issued a directive tentatively stopping work. Thereafter, the corps arranged for a meeting of representatives of the State and county governments, the Federal Disaster Assistance Administration, EPA, and Fish and Wildlife Service to discuss future action and to furnish their recommendations. While the meeting has been held the corps is currently waiting reports before determining whether work can be done to prevent future floodings and other disasters.

Mr. President, this is happening in a somewhat rural and mountainous section of western Virginia, but it could happen in your State. Other disasters could occur in any State of the Union and aid could be halted to protect the habitat of species of animals or plants. Is the protection of their habitats more important than the protection of the habitats of mankind? I just do not believe the American people want all species of plant and animal life preserved, even if it is possible, regardless of the cost, in terms of money, regardless of the cost to our standard of living or regardless of the cost to human life itself. And there were four people killed in these floods.

Of course, in every reasonable way we want to protect fish, wildlife and plants as provided in the Endangered Species Act, but the law we passed was rigid—so rigid that the Supreme Court indicated the courts have no discretion under the act and appeared to invite Congress to make amendments. Had the question been raised, there is a possibility that an act with such rigidity could have been declared void, the entire act, by the Court on the basis of due process. If, as the Court suggests, this is a rigid law, protecting animals but denying protection to the human species, it seems reasonable that it should be amended to provide for consideration of human factors.

The committee has addressed this point in the bill before us insofar as projects of a national or regional scale are conserved by the establishment of a cabinet-level commission. But, it would appear difficult to get seven individuals of cabinet level together to pass upon any substantial number of issues that might arise under the act and the bill does not relieve the rigidity in other than national or regional situations.

What I will attempt to do through a series of printed amendments, all of which are on your desk, is to have the welfare of mankind considered along with the welfare of the lower animals in day-to-day administrative regulations and decisions. This act relates to governmental actions at all levels but it also relates to private actions by the individual citizen. Civil penalties up to $10,000 can be imposed by the Secretary for each violation and criminal penalties up to $20,000 and a year in jail for each violation. Our country has vast resources but they will be greatly limited if no activity is permitted to interfere with the retention of any species of fish, wildlife or plant. Court testimony has indicated that the act applies to complete projects, functioning projects, serving vital needs of society. The Grand Coulee Dam was mentioned as an example of a project that could be shut down should it be found at this time that in some manner the project was endangering some endangered species. And it applies as well to those under contemplation or those under construction.

I hope the managers of the bill and, in fact, that each Senator will give careful consideration to these amendments and a bill can be enacted acceptable not only to the Members of the Senate but agreeable to the vast majority of the American people.

Mr. President, let me conclude merely by saying that if some amendments are not adopted that take into consideration the human factor, I propose to move to recommit the bill to the Committee on Environment and Public Works with instructions to the committee to consider such amendments thereto as will give priority to the welfare of mankind over the protection of fish, wildlife, and plants.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, on June 15 the Supreme Court ruled that the snail darter is protected by the Endangered Species Act (ESA) of 1973 and that the Tellico project in Tennessee may not be completed and put in operation because it would destroy the habitat of the snail darter, an endangered species.

The decision has caused a national uproar over the Endangered Species Act. A spate of editorials have assaulted the act as unnecessarily inflexible—a kind of national straitjacket. Politicians, industrial developers, and all manner of alarmists have joined in a clamor to strike down this monster that is stifling progress, threatening economic growth, and frustrating our national purpose.

As some anonymous wit so aptly put it, one would think that the little 3-inch snail darter had suddenly loomed on the horizon as Jaws III and was about to devour us all unless we marshal the full resources of the Republic to strike him down.

One hardly knows whether to laugh or cry or both.

What, really, is all the fuss about? Is it because the 1973 law is not working as Congress intended? Is the law cumbersome or ineffective or too difficult to administer or too rigidly inflexible? The answer to each of these questions is an emphatic "No." The law is working very well indeed. Much better, in fact, than any of its broad spectrum of proponents could have hoped.

What have been the results of almost 5 years' experience under the law? In that period there have been 260 proposed Federal actions which posed a potential and serious threat to an endangered species. Every single case, save one, was resolved pursuant to the law in a way that did not threaten the habitat or survival of any endangered species.

The law has achieved exactly what Congress intended. What other law can we think of that has so faithfully followed the legislative intent and so effectively carried out its objective? I can think of none.

In short, not a single event, not a single episode, not a single problem has arisen during the 5-year experience under this law that furnishes a valid basis for compromising or weakening the Endangered Species Act.

It is instructive to note that those who administer the law are satisfied with it and oppose any change.

Now, what about that one case, the Tellico Dam and the snail darter?

There are several things to be said about the Tellico Dam which was conceived of 40 years ago under circumstances, conditions and laws which no longer exist. In sum, when all objective factors are weighed, apart from any consideration of the Endangered Species Act or the snail darter, the public interest would have been better served if the project had never been started and will be better served at this time if the project is not completed.

This conclusion is based upon an evaluation of the costs and benefits of a dam with an impoundment compared to the costs and benefits of a dam and a free-flowing river. This point is discussed later in my remarks.

Thus when all the smoke has cleared we are left with the Tellico project as the sole basis for a sweeping attack on this landmark legislation which spelled out in the law our specific recognition of the vital importance of curbing man's recklessness against the natural world of which man himself is a part.

In this legislation we finally recognized that we do not have the wisdom to decide what species shall live and what species shall die. In the last analysis this act was addressed much more to our concern over the future of man than to our concern over anything else.

The Endangered Species Act of 1973 evolved from 8 years of experience with other legislation that spoke to but did not adequately address the endangered species question. By the 1950's there was widespread recognition that species of wildlife and flora were vanishing at an alarming rate due to the activities and intrusions of man. Legislation directed at a reversal of this trend was enacted in 1965 and in 1966. While a step in the right direction, these laws, however, did not adequately resolve the very serious problem. By 1973, there was general agreement that a new and more comprehensive statute was required if species of life that were threatened with extinction were to be saved.

Thus in a special environmental message to the Nation in February of 1973, former President Nixon stated that the existing law "simply does not provide the kind of management tools needed to act early enough to save a vanishing species."

What emerged was a soundly drafted statute that had almost unanimous support in Congress. The law, the Endangered Species Act of 1973, provided a means "whereby the ecosystems upon which endangered species and threatened species depend may be conserved." The law declared that it was "the policy of Congress that all Federal departments and agencies shall seek to conserve engandered species and threatened species."

The heart of the 1973 act is section 7. Simply put, this section requires that "all other Federal departments and agencies shall * * * (take) such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the modification of habitat of such species which is determined by the Secretary * * * to be critical."

The law is clear and the intent of the Congress is unmistakable: the highest priority is given to the protection of species of flora, fauna, and habitat listed by the Secretary of Interior or Commerce as endangered or threatened. Actions in conflict with this policy would have to be modified. The legislative history on this point is overwhelming and conclusive.

S. 2899 would change a basically scientific process and insert in lieu thereof a political decisionmaking procedure. I have read S. 2899 and committee report 95-874 and I have searched for one reason to support it on the merits of the issue. I have not found one because one does not exist. There are a large number of political reasons to change the law but the fact of the matter is, the law is reasonable and is working well.

THE LEGISLATIVE HISTORY

The legislative intent of the Congress was clear in 1973 when it passed the Endangered Species Act. Congress mandated that changes in on-going Federal programs would have to be made where conflicts with the ESA surfaced. Moreover, almost unanimous support of this legislation was received both in the Congress and in the administration, and it strengthened the view that the nation was united and committed to taking whatever action would be necessary to protect our vanishing wildlife and to reverse the trend toward extinction. The Senate passed S. 1983 on a rollcall vote of 92 to 0, the conference report passed on a voice vote. In the House the conference report was agreed to 355 to 4.

The requirement in the 1973 act that affected Federal departments and agencies must modify their project or actions once a conflict arises between an endangered or threatened species and a developmental project is clear and explicit in both the language of the act and the legislative history.

On December 20, 1973 the House considered and passed 355 to 4, the conference report on the Endangered Species Act of 1973. Page H42913 of the Record contains a discussion by Congressman Dingell, the floor manager of the bill, on just this point. Congressman Dingell called to the attention of the House a recent Washington Post story about the bombing by the Air Force of the nesting grounds of the Sandhill Cranes along the gulf coast of Texas. The cranes were one of our most endangered species. Representative Dingell clearly stated:

> Under existing law, the Secretary of Defense has some discretion as to whether or not he will take the necessary action to see that this threat disappears . . . but the point that I wish to make is that once this bill is enacted, he or any subsequent Secretary of Defense would be required to take the proper steps.

A further example of clear legislative intent is contained on page 14 of the House Report 93-412. This page deals with a discussion of the grizzly bear. Briefly, the House told the Park Service and the National Forest Service that both agencies would have to adjust their management programs under the provisions of this new act to insure that the bears are not further endangered. Nothing could be more clear and concise.

The Supreme Court's June 15, 1978 decision in the case of Tennessee Valley Authority against Hill et al. contains an extensive explanation of the legislative history of the law on this very point. I ask unanimous consent that pages 19–31 of the Court's opinion be printed in the Record at the end of my remarks.

It is not necessary to read statement after statement into the Record from Republicans and Democrats alike to make the point that the ESA had strong support on both sides of the aisles. It seems to me that the discussion thus far has clearly defined three issues:

First, Congress was rightly alarmed at the rapid rate that various forms of life were disappearing from the planet; second, Congress and the administration were determining to do something about it, something that would have continuing force, an approach that was long-range and comprehensive in nature; and third, Congress created a program which required all Federal departments and agencies to take whatever action was needed to resolve conflicts with this new law.

Congress neither moved in haste in drafting this approach, nor did it underestimate the importance of this law and the need for the legislation before it was placed on the statute books. In fact, just the opposite is true. The ESA of 1973 was enacted because the 1965 and 1966 laws were ineffective. There was universal agreement on this point.

The Endangered Species Act of 1973 is fair, it is flexible, it works, and it is vitally needed. There is no compelling reason to modify it.

HOW THE LAW WORKS

To demonstrate the flexibility of the law one only needs to look at how the law has worked since enactment.

Over 4,500 consultations have been conducted pursuant to the Endangered Species Act. A "consultation" is defined as any question on, communication about, review or investigation of any Federal activity that might affect any endangered or threatened species or its critical habitat. Consultations may be a simple 5-minute phone call requesting information on the location of an endangered species or its critical habitat in relation to a proposed or planned Federal project or a full-blown investigation requiring many person-days of effort on a complicated Federal action that involves a dozen or more endangered species.

The Interior Department estimates that 90 percent of the consultations require only an hour or less and may not result in a permanent record. There are the phone calls and personal discussions that occur daily, even hourly, at the lowest field levels of the service.

About 5 percent of the consultations are more complicated and take about one person-day to complete. These require minor analysis and will usually result in a written report, letter or other communication.

The last 5 percent of the consultations are the most difficult. They embody complex Federal activities that usually impact several endangered or threatened species and their critical habitats. These consultations require anywhere from 2 or 3 to 200 or 300 person-day and effort and always result in an official "biological opinion" signed by a member of the Service's directorate.

Approximately 260 consultations have occurred where a major Federal action would adversely affect a listed species. In all but one case, the Tellico Dam, the consultation requirement of section 7 worked. Two other cases were litigated. The second case was National Wildlife Federation et. al. against William Coleman, Secretary of Transportation. An out of court settlement was reached. The DOT was funding a project in Mississippi, Interstate 10, which would have disturbed the nesting area of the sandhill crane. The interchange that would have caused the problem was relocated. The final case was Sierra Club against Robert Froehlke, Secretary of the Army, the so-called Indiana Bat case. The court in this instance held that the planned construction of the Meramec Park Lake Dam by the Corps of Engineers would not have harmed the population of the Indiana Bat.

By negotiations involving 260 major actions, the ESA has blocked only one project, the Tellico Dam in Tennessee, a project that should never have been started in the first place. According to the Fish and Wildlife Service there are no Tellicos in the future of the 1973 Act. There are no irresolvable conflicts that cannot be settled pursuant to section 7 of the law. One bad project is too little of a reason to justify such a massive change in the law.

THE COMMITTEE REPORT

The committee report makes two arguments why an inter-agency committee is needed to resolve possible conflicts between the purposes of the Endangered Species Act and other federally authorized programs, projects, and actions.

First, the committee states on pages two and three of the report that "(T)estimony received by the Committee indicates that a substantial number of Federal actions underway appear to have all the elements of an irresolvable conflict." When pressed, the committee staff will produce a list of 121 actions only 12, less than 11 percent, involve possible conflicts. This is the "substantial number" the committee report mentions. However, Assistant Secretary of Interior for Fish, Wildlife and Parks Robert Herbst in a June 12, 1978 letter to me refutes this list and allegations of conflict. The letter reads:

> DEAR SENATOR NELSON: Earlier this year a list of 12 Federal projects (attached) that may pose "potential consultation problems" was prepared for the Senate Subcommittee on the Environment at the request of key subcommittee aides. It was not intended then nor is it accurate now to state that these potential consultation problems represent insurmountable obstacles that will result in "Tellico-like" situations after the consultations are completed. In fact, consultations have now been completed on three of these projects (Miami Jetport—Florida, Dickey Lincoln—Maine, and Osceola phosphate mining—Florida) and no jeopardy to the concerned endangered species was found providing reasonable precautions are taken as outlined in the Biological Opinions concerned.
>
> We are confident and hopeful that no major controversy will develop with the other projects either so long as the consultation is conducted by open-minded people with an honest desire to accomplish the concerned project while minimizing adverse effects on the critical habitats of endangered or threatened species. We can assure the U.S. Congress that the Department of the Interior will always approach the consultation table with this point of view.
>
> Sincerely yours,
>
> BOB HERBST,
> *Assistant Secretary for Fish and Wildlife and Parks.*

Second, the committee report on page 3 indicates that 20,000 consultations are expected in fiscal year 1979 alone. The impression is given that the system will be swamped with paperwork, that decisions will not be made on a timely basis, that a review procedure is necessary.

It is important to note that the managers of the system are satisfied and confident that the additional consultations can be handled in an efficient and speedy manner. Furthermore, all these consultations would have to take place under Culver-Baker just to satisfy the requirement that good faith negotiations have occurred before any project would be considered for an exemption from the act.

THE PROCESS OF LISTING

Currently there are 619 endangered species—439 foreign and 180 native, and 43 threatened species—17 foreign, and 26 native.

Section 4 of the act spells out the process. A species can only be listed as threatened or endangered for any of the following reasons: First, the present or threatened destruction, modifications, or curtailment of its habitat or range; second, overutilization for commercial, sporting, scientific, or educational purposes; third, disease or predation; fourth, the inadequacy of existing regulatory mechanisms; or fifth, other natural or manmade factors affecting its continued existence. These determinations must, by law, be made "on the basis of the best scientific and commercial data."

Furthermore, before listing a species the Secretary must consult with: First, the affected State(s); second, interested persons or organizations, and other interested Federal agencies, and cooperate with the Secretary of State and with the country or countries where the species is normally found. Before listing a native species the Secretary must publish notice in the Federal Register and notify the Governor of each State where the species is found. The Secretary must then allow the State 90 days to comment on the proposed listing. A summary and explanation of all comments received must then be placed in the Federal Register.

TELLICO VERSUS THE SNAIL DARTER

There appears to be widespread misunderstanding about the Tellico Dam project. Contrary to popular opinion, the major purpose of the project is neither flood control, nor navigation improvement, nor even electric power generation. It is real estate speculation. Tellico is a gigantic, hundred-million-dollar-plus, Government owned and operated recreational and industrial land development scheme. According to recent figures released by the TVA, more than 57 percent of all the project benefits would be derived directly from recreation and industrial shoreline development. Not very many people realize this; it has been a well-kept secret.

Of the $109 million invested thus far only $22.5 million has been spent on construction of the dam; $8.9 million of this amount is labor costs.* Other expenses for the Tellico project include:

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*By far the most important purpose of the Tellico project is recreational and industrial development not flood control, hydroelectric generation, etc.

	Million
Land (all of which was acquired under threat of eminent domain)	$25.7
Road construction through valley and project area adjustments	42.5
Overall project administration and supervision	15.4
Channel work on canal, public use facilities	12.1
Other expenses—miscellaneous	12.9

The Federal Government has now condemned from private landowners 38,000 acres of land, the majority of which is prime agricultural farmland. TVA is the largest real estate firm in Tennessee. Tellico was never formally authorized by Congress. TVA, operating under emergency authority dating back to the New Deal planned the project for completion before World War II. It got sidetracked for a while but the plans were never changed. It is interesting to note that TVA is also the only Federal water resources development agency that can condemn more land than it actually needs for a project, speculate with the value of that land, and then resell the land they have condemned to the public at a vast profit from the Government. This is not sound management, it is a "legalized" grand theft of the public.

Only the estimated $700,010 per year from the sale of 22,000 acres of land over the project's 50-year economic life keeps the Tellico program marginally afloat. A cost-benefit ratio has not been updated for over a decade. This again is unique to TVA because the Corps of Engineers, for example, updates their cost-benefit ratios annually.

The fact of the matter is that the land, the 38,000 acres already acquired by the Federal Government, and the value of the agricultural productivity of the farmland is worth more today than all of the estimated benefits of the Tellico project.

Tellico simply is a water resources dinosaur that Congress should have made extinct years ago. It is one species that unfortunately is not threatened or endangered, but nonetheless, it is a species that Congress should wipe out.

The absurdity of this project just goes on and on. In order to add 200 million kilowatts of additional generating capacity, to produce $3 million in additional revenue to a system TVA proposed to destroy farm production estimated by the TVA to yield between $29.5 and $52 million a year. In order to create a 14,000-acre lake for flat water recreation, TVA proposed to flood this prime agricultural land despite the fact that, according to the GAO, there are right now 22 major, underutilized lakes within a 60-mile radius of the Tellico site.

TVA proposed to do all this in the name of progress. The key word in this sentence is "proposed"—past tense. TVA no longer advocates completing this boondoggle. Under the chairmanship of Dave Freeman, reason has been restored. TVA is now working with the Interior Department and is negotiating pursuant to section 7 of the 1973 act. TVA now realizes that the Tellico lands are worth more dry than if they were inundated under approximately 18 feet of water. Tellico, including the sunk costs in the dam which are minimal is worth more to the Federal Government, worth more to the people of Tennessee, the way it is today.

The strong tradition of pork-barrel politics has raised the battle cry, "Amend the Endangered Species Act." The battle cry shouted in return ought to be something along the lines of, "You have got to be kidding." Unfortunately, they are not kidding. The proponents of these highly capital-intensive, environmentally destructive, and economically wasteful projects have seized upon the Tellico and the snail darter to attempt to deal the Endangered Species Act a crippling, if not fatal, blow.

The Interior Department has stated publicly that there are no more Tellicos in the future of the Endangered Species Act. There is not one project that might have a conflict with the act whose importance to the Nation is so overwhelming that this great country would suffer if it were not built as presently designed. The "horrible hypothet" painted by opponents of the ESA and the media does not exist. It is popular with the media to repeat that the law is too rigid, too inflexible but they cannot present one case where the law, in practice, has proven to be rigid. They cannot cite one example where a change may be justified.

The great irony of this issue is that a careful reading of the Culver-Baker amendment and S. 2899 leaves one with the conclusion that Tellico is not even eligible for consideration by the committee S. 2899 would create.

Tellico fails on two grounds. First, TVA has not, until very recently, conducted any negotiations with Interior. The consultation process will have to be carried on in good faith before Tellico becomes an "irresolvable conflict."

Second, the committee report clearly states that:

> The criteria expressly mandate that the balancing . . . is between benefits of proposed federal actions and benefits of alternative courses of action.

Given David Freeman's testimony before the House Subcommittee on Fisheries, Wildlife Conservation, and the Environment on June 23, 1978, the benefits of modifying the project clearly outweigh the benefits of the proposed action, the completing of the dam and the filling of the reservoir.

Progress has not been halted and we can thank the snail darter for saving this Government and its hard-pressed taxpayers tens of millions of dollars. It is fear and ignorance that are the driving forces behind this change in law, not fact and reason.

THE CULVER-BAKER AMENDMENT

A careful review of the 4½-year history of the Endangered Species Act of 1973 demonstrates beyond any doubt that, on the merits of the issue, there is no basis for a change in the law. In fact, the arguments that support a straight 3-year reauthorization are overwhelming and conclusive.

Those who have authored and support S. 2899 are perfectly sincere in their concern about the reckless and irresponsible attacks on the 1973 law that are now being made by groups like the chamber of commerce. These organizations simply wish to destroy this vital program. The supporters of S. 2899 perceive that the politics of the issue, rather than the merits of the argument, require a modification of the law in order to secure reauthorization of the act. If they are correct, then the law will have to be amended. And, S. 2899 is a better and more carefully drafted modification than any other approach introduced thus far.

However, it seems to me, that if the politics are going to force a change in the act, some alteration of Culver-Baker, modifications that lessen the degree of violence S. 2899 imposes on the law, are required.

First, S. 2899 will encourage rather than discourage Federal agencies and departments to flout the basic purposes of the act, the protection of endangered species. The fact that the present law requires modification or termination of an action as the only alternative when a species or its habitat are endangered is a compelling inducement to work out a solution. That is the history of the act. If, however, an agency believes it can persuade the committee to grant an exemption, the consultation process becomes a charade. Yes, they will talk to one another, but as long as there is an opportunity for business as usual, there will be a desire to fight for one's project.

Second, S. 2899 only requires a simple majority decision on the question of whether or not the consultation process has been carried on in good faith. This decision must be made before a project is eligible to be considered for an exemption. Since the heart of the bill is the consultation process and since a 4–3 vote on this point triggers the review, a change in the Culver-Baker amendment is necessary to insure that the consultation process is not undermined. Such a change is required by amendment No. 3132 which requires a unanimous decision by the committee on whether the consultation process has been carried on in good faith.

Third, the exemption program under S. 2899 is available to all projects regardless of their stage of planning, design, or construction. I believe that an exemption should only be available to actions for which a "substantial and irretrievable" commitment of resources has been made prior to the listing of a species which causes a conflict as endangered or threatened. All other projects or actions in their feasibility or design stages ought to be required to comply with section 7 of the law as currently enacted. Amendment No. 3132 makes this change.

Fourth, one of the grounds for granting an exemption would be if the committee determined that there was no "reasonable and prudent" alternative to the proposed action. This terminology has no legal meaning and the committee report makes no attempt to define what is "reasonable and prudent." On the other hand, the term "feasible and prudent" has been construed by the Supreme Court to mean "consistent with sound engineering." This definition grew out of the Overton Park against Volpe case. "Feasible and prudent" is a known standard and if S. 2899 is adopted, as drafted, the Congress will be telling the courts that it is establishing a new standard for review, a standard that, it is my judgment, is far more vague and weaker than the known legal definition of "feasible and prudent." Moreover, a very large majority of the key terms in S. 2899 are undefined and will certainly invite litigation. In considering the grounds for an exemption, I believe the Congress must be very careful and it, not the courts, should decide what are the ground rules. Amendment No. 3132 makes the change to a known standard of law.

Fifth, an action may also qualify under S. 2899 for an exemption if it is of "national or regional significance." Again, the term "regional" is not defined by the committee. What does it mean? No one knows.

Regardless of intent, it seems to me that if we are to grant exemptions, then actions or projects that are of national significance should qualify.

Almost anything can be construed to be of "regional" importance. The Congress, in drafting the ESA, wisely decided to give the protection of endangered species and habitat the highest national priority. It makes no sense to undermine a national program with regional actions. The words "or regional" should be dropped. This would be accomplished by amendment No. 3132.

Sixth. S. 2899 imposes an unfair and unreasonable limitation on citizen suits by requiring that parties wanting to file litigation to challenge decisions made under S. 2899 give 60 days notice. If this language is enacted, a decision to exempt an action could not be stopped by the issuance of an injunction for 60 days. This is more than enough time to allow an agency to complete the action before judicial review of the decision can take place. Amendment No. 3132 would correct this problem by waiving the 60-day notice requirement for all suits that challenge the decision of the interagency committee.

We as a nation have made a fundamental, commitment to environmental quality. We are investing tens of billions of dollars to improve and enhance our environment. The programs are broad and widely supported by the public. Finally, we have a President who understands the problem and has proposed a constructive series of water policy reforms. We have a Secretary of the Interior who says that the days of "rape, ruin, and run" are over. And yet, we seem to be prepared, as a Congress representing the entire Nation, to substantially weaken a vital program because one or two States have projects that they want completed regardless of the consequences.

So, what we are really left with is a political argument that a good law, a law that is working well, doing the job Congress and the President intended, should not be changed because some Members of Congress believe that some day, something unknown may occur, something that no one can point to now may happen that may threaten a pork barrel project or an action by the Federal Government that, judging from the history of the act, can be avoided in the first place.

It is for this argument, and this argument alone, that the Senate is today debating S. 2899.

Mr. **Stennis**. I shall not offer an amendment nor seek disposition of my amendment tonight.

Mr. President, I filed last week amendment No. 3097 to this pending matter and now for the purpose of clarification and some modification I wish to change that amendment and modify to the extent as reflected by this amendment that I hold in my hand and may send to the desk, if that is in order.

The **Presiding Officer**. Without objection, the amendment will be so modified.

Mr. **Stennis**. Mr. President, this does not disturb the order previously granted for an hour and a half of debate on this amendment; is that correct?

The **Presiding Officer**. That is correct.

Mr. **Stennis**. Mr. President, I thank the Chair.

Mr. President, this amendment, as numbered, is proposed on behalf of myself and Senators Eastland, Garn, Hatch, Laxalt, Young, Curtis and Goldwater.

This amendment differs but slightly from amendment No. 3097 which I offered on June 28, and I would like to explain those differences.

First, the amendment would substitute for the words "to the extent feasible" proposed by my previous amendment the words "insofar as practicable and consistent with their primary responsibilities."

Second, I propose to add a new subsection (c) to make it clear beyond question that any action carried out in compliance with subsection (a) of the proposed amendment to section 7 shall not be deemed to be a violation of either section 4(d) or 9(a) of the act. Both of these subsections contain prohibitory language and I think it is wise to add this new provision.

Finally, this amendment makes certain technical corrections to assure that the amendment is keyed to pages and lines of the bill reported by the committee which is now before the Senate rather than the bill as introduced.

The basic purpose and thrust of my amendment No. 3097. In that respect, there is no change.

Mr. President, before I discuss my amendment I want to point out that the committee and I are in agreement on the proposition that an amendment to the Endangered Species Act is needed to provide some flexibility in its administration. We disagree as to how this should be done and as to the degree of flexibility needed. I will briefly discuss why I believe that the committee proposal is not the answer to the very real problems with which we are confronted.

The committee bill proposes to set up a seven-member Endangered Species Committee with the power to grant exemptions to the protection afforded to endangered species when an irresolvable conflict exists between the sponsoring agency and the Fish and Wildlife Service, or the National Marine Fisheries Service. The committee would be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of the Smithsonian Institution, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, and the Governor of the State involved. In order to grant an exemption at least five of the seven members would have to agree.

This committee process is cumbersome and unwieldly, and promises delay on its face. These are high level officials and it would be difficult to assemble all of them, or even all of their designees, and this is what the bill requires. The committee process which the pending bill proposes could mean a slow and lingering death to many worthwhile and needed projects. A very pertinent consideration is that the committee could be absolutely overwhelmed by the number and variety of cases presented to it. This could very well prevent it from making a decision within 180 days as the bill would require.

Equally important are the stringent requirements laid down before a proposed action could be exempted. For one thing an exemption must be approved by at least five of the seven members. As a prerequisite to granting an exemption these five members must find: First, that there is no reasonable or prudent alternative to the proposed action; second, the action is of regional or national significance; and third, the benefits of the proposed action clearly outweigh the benefits of alternative courses of action that are consistent with conserving the species or its critical habitat.

There are very heavy burdens of proof to be carried by a sponsoring agency. They are particularly heavy when the requirement of five affirmative votes and the composition of the committee is added. The Administrator of the Environmental Protection Agency and the Chairman of the Council on Environmental Quality are professional environmentalists. It is hard to conceive of them voting for an exemption. The same thing would apply to the Secretary of Interior since in most cases he would be asked to overrule one of his own agencies. Even if all other committee members voted for an exemption, and this is highly doubtful under the stiff requirements laid down, the exemption would be denied by one vote. The committee setup appears to me to be an institutional veto.

What my amendment proposes to do, by contrast, is to put into the law precisely what the Senate was told was its purpose and intent when it passed the act in 1973. At that time former Senator Tunney, the sponsor of the bill, said:

> (A)s I understand it, after the consultation process took place, the Bureau of Public Roads, or the Corps of Engineers, would not be prohibited from building a road if they deemed it necessary to do so.

He also told the Senate:

> (A)s I read the language there has to be consultation. However, the Bureau of Public Roads or any other agency would have the final decision as to whether a road should be built. That is my interpretation of the legislation at any rate.

My amendment puts explicitly into the law just what Senator Tunney in 1973 said the law meant. Indeed, it goes further by setting down standards for the sponsoring agency to follow with respect to projects involving the protection of endangered species. It provides that the sponsoring agency "shall balance the social, cultural, economic, and other benefits to the public if such action is carried out as planned against the esthetic, ecological, educational, historical, recreational, or scientific loss to the public which would occur if such species were to become extinct." It seems to me that these are the appropriate and pertinent factors to be balanced by the agency in determining whether a planned action should be modified, delayed, or terminated.

There is nothing radical or unusual about this proposal, Mr. President. It is parallel to the procedure followed under the National Environmental Protection Act of 1969. Under that legislation the sponsoring agency makes its own study and investigation and, after receiving the comments of other agencies and interested parties, makes a decision on whether to proceed with the project, to modify it or to abandon it. In so doing, it must balance the need for and worth of the project against the environmental consequences which would result if the project was completed.

In addition, my amendment contains two grandfather provisions while the committee bill contains none. The first would prohibit a project from being halted if it was more than 50 percent complete based upon the amount expended. The second would provide that the act should not apply to any project under contract or for which construction funds had been appropriated as of the date of enactment of the original law.

I am not going to discuss the Tellico Dam case in detail again. I do want to point out that, under the Supreme Court's decision, the closure and operation of the dam was halted even though it was more than one-half completed when the Endangered Species Act was passed in 1973 and more than $105 million had been invested in it at the time of the injunction by the Circuit Court of Appeals.

I understand also that the Dickey-Lincoln Dam, a Corps of Engineers project in Maine, was and perhaps still is threatened because of the existence of a useless plant known as the Furbish lousewart.

The Florida Everglades Jetport is in an uncertain status because, after a tentative site selection and the expenditure of well over $1 million in studies and environmental monitoring, the nomadic Florida Everglade Kite, an endangered species, migrated into the area.

There are many other cases that could be cited. I mention these because they illustrate the absurd and unreasonable results which can come about under the existing law as construed by the Supreme Court. The same results would be both possible and probable under the committee system recommended by the pending bill and that is why I believe my approach is far more preferable.

Let me emphasize, so that we do not lose sight of it, that this law and its potential impact is not limited to Federal projects. It applies to any project, Federal, State, municipal, or private, which is supported by Federal funds, including grants or loans, or which requires Federal approval by licensing, permitting or otherwise. The scope of the reach of the law must be recognized before its potential impact is fully understood.

As the law now stands, any Federal project, or any project involving Federal action, even though it involved the highest national interest, could be stopped cold if it impacted on the most insignificant, most obscure and most worthless plant or vertebrate. This would still be entirely possible under the bill reported by the committee.

The Fish and Wildlife Service has estimated that there may be as many as 1 million species and subspecies of animals and plants entitled to protection under the law. It is conceivable then that virtually every river, stream, hillside, and field may contain a unique species or subspecies of life. Therefore, it is possible that virtually any project could be stopped in its tracks if the opponents just look hard enough for a unique animal or plant in the area. You may be sure that they will do so.

There is some suggestion that the Endangered Species Act is being used, not primarily to protect plants or animals, but to stop controversial projects which cannot be stopped in any other way. There is also a suggestion that the act's supporters are deliberately keeping a low profile for the time being. The committee report states:

> It has also been brought to the committee's attention that the General Accounting Office suspects, but has not confirmed, that the Fish and Wildlife Service has refrained from listing species which may pose a conflict with a Federal action, for fear of provoking Congress into weakening the protective provisions of Section 7.

I fully support legitimate ecological and environmental concerns. However, I believe that in passing the Endangered Species Act we inadvertently unbalanced the scales unduly. We must redress the situation and enact legislation which does not unnecessarily and unreasonably hamper progress, growth, and development. We must accommodate people and their needs as well as the environment and its needs. What is needed is a balanced and flexible decisionmaking process under which all important and relevant factors are weighed before the final decision. My amendment provides this. I urge the Senate to adopt it.

Mr. President, let me point out here that this is a grave and far-reaching matter. For several years it has been my privilege to serve as chairman of the Appropriations Committee on Public Works throughout the 50 States, and this matter and the question of added costs has arisen time and time and time again just on these items.

Mr. President, may we have order, if not in the Senate at least down here at the bar.

I warn now that the carrying out of this proposal already in the law, and confirmed by the Supreme Court of the United States, is heading for the expenditure of hundreds of millions of dollars, and I will give some illustrations of that when I address this Chamber later on this amendment.

So we have just begun to hear, Mr. President, what the potential of this amendment carries. I am not seeking the repeal of the law. I am not critical of the Supreme Court of the United States for its decision on the law as written by Congress. I think the Court was exactly right. They did give it a very rigid interpretation, but they were totally right in their interpretation of the meaning of the words that Congress used.

If there ever has been anything thrown back into the laps of Congress with force, it is this opinion of the Supreme Court of the United States. I can hear the bells ringing now that we had better do something about this, and we can do something about it without repealing the original purposes of the act, just provide a more reasonable way of reaching an opinion or conclusion on the merits of the facts, whatever they may be, in these hundreds of cases that are involving, just as certain as we are here, billions of dollars, and not just Federal dollars, and we have none to spare, but in the field of private enterprise, construction of most any kind.

I believe with the already accumulated list of what I understand are several thousand endangered species that have been found by the official authorities, that many, many, many more of them will be found, and the tenor of a great deal of these challenges is very obviously not concerned about the endangered species but to stop the project.

It has been a long, long time since Congress intentionally stepped in and deliberately killed and cut off and discontinued one of its own projects, this Tellico Dam, where we had already spent more than $105 million.

I thank the Senator from Iowa for yielding me the time.

Mr. CHAFEE. Mr. President, no species, not even man, exists independently of all other species. The value of a healthy, balanced ecosystem should be obvious, but sometimes it is overlooked until it is too late. I am talking about the need we have to preserve a diversity of species.

With this in mind, I must enthusiastically rise in support and defense of the Endangered Species Act. This landmark legislation was Congress first attempt to recognize and deal with the threat posed by man's activities on a growing number of species. The legislation was enacted to first, protect ecosystems upon which endangered and threatened species depend and second, to provide a program for the conservation of such species themselves.

The many forms of life on our planet represent millions of years of evolution and diversification. These species have each gone through an evolution process in which they have established intricate interdependent relationships which can be of critical importance to their survival.

The act recognizes that it is only through the ability to provide protection to a full spectrum of plant and animal life that we are able to provide protection to any particular species. In other words, if we want to perserve species such as the peregrine falcon, the bald eagle, and the grizzly bear, we must also preserve the network of life upon which they depend.

At the same time that we have started to appreciate the potential value of species and the complex life support systems they provide, we have also witnessed an accelerating rate of their extinction or disruption. Widespread disturbance of habitats and overexploitation of the environment are the major causes of this problem. But we can avoid many of these extinctions and endangerments by protecting a relatively small area of critical habitat and by careful development of land and water-use projects.

Mr. President, in the committee I fought to preserve the act as it was originally enacted, but I was not successful. I support efforts to preserve that act here. But, Mr. President, I cannot refrain from commenting on one particular amendment that concerns me. That is the amendment that is supported by the distinguished Senator from Mississippi (Mr. Stennis). That amendment, I believe, would prevent the Endangered Species Act from achieving either of its principal purposes. I say this because Senator Stennis' amendment would preempt the consultation process created under section 7 of the act.

Section 7 requires that Federal agencies consult with the Fish and Wildlife Service when their proposed activities or programs may affect a listed endangered species. This does not mean that flexibility is thrown to the winds. The new regulations published by Fish and Wildlife Service for section 7 recognize that consultation procedures must be sufficiently flexible to accommodate the myriad of activities that are authorized, funded or carried out by the Federal Government.

Conflicts between the Endangered Species Act and other Federal activities are being resolved through this administrative process. The result of consultation is that in almost all cases Federal agencies have found that for both proposed and ongoing projects, modifications or alternatives can be designed which avoid conflict with the Act. Senator Stennis' amendment fails in my judgment to recognize this fact. It seeks to avoid conflicts by outright exemptions from the act for large classes of projects. This appears to me to be stopping the consultation effort before it even has a chance to begin.

Senator Stennis' approach has a number of shortcomings which will most certainly result in unnecessary destruction of endangered species and habitats critical to their existence.

First, the amendment changes present law by providing that in cases where conflict between the Endangered Species Act and a Federal activity occurs, that the construction agency itself should decide if the project should be modified or terminated. Mr. President, each one of my colleagues is fully aware of the commitment that many line agencies have to the completion of proposed projects, in many instances with less than appropriate attention to other important factors such as endangered species. They want to get the projects built. To allow a single agency head to determine the advisability of destroying a species or completing the agency's project as proposed, seems a bit like putting the fox in charge of the henhouse.

The amendment also contains two grandfather clauses. The first would exempt any project at the 50 percent stage of completion from having to meet any of the requirements of the act. The second would exempt any project which was under contract or otherwise underway as of the date of enactment of the law.

It might be noted first that grandfathering of any sort makes no distinction between species. Thus, grandfathering, I believe, would be an unacceptable approach to resolving conflicts under the Endangered Species Act for those critics of the act who believe that values can be placed on different species. Under the grandfathering clauses of the Stennis amendment, eagles, wolves, whooping cranes—in other words, all those beautiful species that seem to draw people's attention—are just as much in jeopardy as are some of the lower life forms. Even the act's most vocal critics, I do not believe can possibly intend such a result. This is too high a price to pay for a Federal project in the minds of almost everyone.

The exemption of all activities that are 50 percent complete seems to completely ignore the history of the consultation process. If a project can be modified to avoid harm to an endangered species or the critical habitat necessary to the species' survival, then the modification should be given every opportunity to succeed. The consultation process has indeed been successful in helping agencies design and carry out modifications in a number of ongoing projects. An outright exemption of projects through grandfathering provisions is a path that the Senate ought to avoid in this legislation.

The second type of grandfathering that is proposed in the Stennis amendment is perhaps perilous as bad as the first. This approach would exempt from the act any project which was in any way ongoing in 1973. The language in the amendment is "or otherwise underway." What exactly does "otherwise underway" mean? It could be defined by the courts to signify congressional intent that all the thousands of Federal activities, good or bad, that have been proposed over the years, are above the Endangered Species Act requirements. The sheer number of Federal activities involved in this type of exemption is staggering.

Even if an objective analysis shows the benefits of saving the species, Senator Stennis' amendment would deny the act's application to a broad range of activities that by any reasonable criteria ought to give consideration to the protections provided by the act.

The Stennis amendment jeopardizes the workability of the Endangered Species Act. The amendment should be opposed. It undermines one, if not the most important, aspect of the act * * * the consultation process. In addition, the grandfathering provisions do no less than insure that endangered species considerations will not be brought to light in the vast majority of Federal activities.

For these reasons, Mr. President, I oppose the amendment which is being proposed by Senator Stennis and would ask each of my colleagues to oppose it.

[From the Congressional Record, July 18, 1978]

SENATE CONSIDERATION AND PASSAGE OF S. 2899, WITH AMENDMENTS (Continued)

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of legislative business, and proceed to the consideration of S. 2899, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine exemptions from certain requirements of that act should be granted for such actions.

The PRESIDING OFFICER. The bill is under a time limitation. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I seek recognition for the purpose of calling up an amendment.

Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending question is S. 2899.

AMENDMENT NO. 3097, AS MODIFIED

(Purpose: To require that social, cultural, economic, and other benefits to the public be considered prior to stopping certain Federal actions)

Mr. STENNIS. Mr. President, I call up my amendment which was offered yesterday in modified form, and which had some debate thereon. There is an agreed time on the amendment, Mr. President.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Mississippi (Mr. Stennis), for himself, Mr. Eastland, Mr. Garn, Mr. Hatch, Mr. Laxalt, Mr. Young, Mr. Curtis, and Mr. Goldwater, proposes amendment No. 3097, as modified:

On the first page, beginning with line 5, strike out all through line 5 on page 14 and insert in lieu thereof the following:

"SEC. 2. (a) Section 7 of the Endangered Species Act of 1973 is amended (1) by inserting immediately after 'insure,' comma and 'insofar as practicable and consistent with their primary responsibilities, and (2) by adding immediatedly after the period at the end thereof the following: 'In any case involving a determination by an agency head as to what extent, if any, such action authorized, funded, or to be carried out should be modified, delayed,

or terminated in order to assure, to the extent feasible, that such actions do not jeopardize the continued existence of such endangered or threatened species or result in such destruction or modification of such critical habitat of such species, such agency head shall balance the social, cultural, economic, and other benefits to the public if such action is carried out as planned against the esthetic, ecological, educational, historical, recreational, or scientific loss to the public which would occur if such species were to become extinct; but in no event shall such agency be precluded by reason of this Act or any other law from carrying out any such actions involving the construction or other establishment of any project or part thereof, without regard to whether or not such action jeopardizes the continued existence of endangered or threatened species or would result in the destruction or modification of critical habitat of such species, if such project or part is at least 50 per centum completed based upon the amount expended.

"(b) The provisions of Endangered Species Act of 1973 shall not be applicable to any project under contract or for which construction had been appropriated as of the date of the enactment of such Act.

"(c) No action authorized, funded, or carried out in compliance with subsection (a) by a Federal department or agency shall be deemed to be a violation of section 4(d) or 9(a)."

On page 14, line 6, strike out "SEC. 4." and insert "SEC. 3.".

On page 14, line 23, strike out "SEC. 5." and insert "SEC. 4."

On page 15, line 1, strike out "sections 6 and 7" and insert "section 6".

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I yield myself 10 minutes, and I may yield myself more time before I yield the floor.

Mr. President, as the Senator from Iowa has said, this is an important amendment. The basic proposal is a committee amendment that would not only extend the operation of the law, which would otherwise expire in September of this year, but the committee amendment proposes to modify the substance of the law and set up a special committee to pass upon questions relating to endangered species.

My amendment is really directed to the committee amendment and proposes to amend it along these lines, it being based on the Supreme Court decision, as well as the present law, in the Tellico Dam case in Tennessee. Even though it was 90 percent complete, a $116 million dam project, with about $100 million having been spent on it, and it being half completed when the original law was passed, nevertheless the Court held that, under the language of the present law, which the committee would propose to extend, with some modification, construction would be brought to a complete halt and stopped. Under the language of the law, the Court had no alternative.

Mr. President, in spite of the facts in that case being contrary, it seems to me, with all deference, to the rule of practical commonsense, I think the conclusion reached by the Court is the only one it could have reached under the wording of the law. It left no discretion and no practical alternative, really, once the facts about critical habitat of endangered species being destroyed were developed. This magnifies the situation and demands that despite the good purposes and the high motives of preserving endangered species—animal life, plant life, whatever it is—in spite of all the good points in favor of it, the law, as a practical matter, is just impossible and must be amended.

The committee agrees that there must be a modification, but I respectfully believe it does not go far enough.

The amendment that I propose would leave intact the idea of having a law in this field for regulation, but it would modify the law to the extent that the head of the sponsoring agency would have to make a judgment under all the facts—and I will have the exact language in just a moment—and a determination in which he would have some discretion. It would include the idea of feasibility, even though "feasibility" is not the word used here. It would relate to the alternatives that he could consider. The Agency head would have a certain amount of discretion, and would have to make a judgment, and then that judgment would determine what should be done.

Of course, it would be appealable to the court, as is true in other instances, by a person aggrieved by the decision. It could be carried on to court and redetermined there, according to the guidelines of this law.

Mr. President, just what does it mean to refuse to make some meaningful modification of this law? I am not complaining about this, because it happened to be in my State. There has now been a solution to the situation. One of our interstate highways is in the process of construction—and the interstate highway is a national institution certainly presumed to affect all of our people—this was interstate No. 10 along the Southern border of the United States. That proposed right of way went through the habitat, or part of it, of the sand hill crane, a rather attractive-looking bird with a red top notch. Forty-seven of them were involved.

To deal with that matter has cost 2 years loss of time. It has caused the changing of the right-of-way of that interstate highway to the extent of $4 million in added cost for the acquisition of land for highway, the approaches, and the interchange. Four million dollars has been added. But that is not nearly all the story.

To provide what was described as an additional habitat for those 47 cranes, it is costing $18.2 million extra out of the taxpayers' pocket.

And that is at a rate—I do not have my memorandum here just now, that is at a rate, for those 46 cranes, of $485,000 each. This is not something imaginary, a mere possibility of its happening. It has already happened. That is the situation now.

The Court held, in the other case, the Tellico Dam case, that that matter was final when the gavel fell; there was no other remedy anyone had except to comply with it, the law is just that tight. I say I think they reached the right conclusion on the present wording of the law.

What does that mean? That means that, throughout the 50 States, on every proposal, almost, that is made with reference to the construction or the building or the channeling of lakes, dams, highways or any other matter, if it is Federal property or if there is Federal money going into the project, or if it is private property and is nevertheless found to be the habitat of an endangered species, that law applies.

That law applies with the inexorable application of its deadly terms and thus it kills the project. It kills the project. What has gone into this dam now, as it stands, so far as the original purpose and planning are concerned, is through, over, done. That can apply and will apply to a great number of others throughout this great land—even private property, as I said, if that private property is found to be that habitat of one of the endangered species.

The Fish and Wildlife people—and they are a respectable group—have estimated, as I recall, that there may be as many as 1 million species and separate subspecies of plants and animals that may be entitled to protection under the law if we merely extend the life of this law. With all deference, the committee amendment does not extend enough practical aid or remedy to meet these situations.

Now, what are we going to do? I have no grievance about this matter; no one has done anything to me or anyone in my State about it. But I had the privilege of being the chairman of the Subcommittee on Public Works for several years, down to but not including this year.

There we had project after project, with millions and millions of dollars, throughout this great Nation, being invested—capital investment, as we all know. Some of the greatest investments the Nation ever made in a material way is in these projects throughout our land, and more are coming. They are going to have to come. This new age demands added energy. There, time after time, in hearing after hearing, we saw the prospects of these added items of cost in the millions of dollars. So I made up my mind then that when there was a change, I was at least going to try to do something about it in a practical, effective way.

I am not asking that the law be discontinued or that the law be repealed. My amendment just sets up a remedy that provides for a board, or provides for the development of all the facts, and then a decision has to be made that is subject to court examination, subject to appeal. It has to be made within the limits of the language of this law.

They have to consider alternatives. They have to weigh the importance of the preservation of the endangered species, for one thing, against other items of the highest practical importance.

I am not an expert in this field and do not aspire to be.

Mr. Culver. Will the Senator yield for a question at this point?

Mr. Stennis. Yes.

Mr. Culver. The Senator made reference to a board. Our copy of the amendment has no reference to a board.

Mr. Stennis. The board is in the committee amendment, not mine. This relates, though, to a responsible official acting with discretion after the facts are developed. I thank the Senator for correcting me.

The Presiding Officer (Mr. Nunn). The Senator's additional 5 minutes have expired.

Mr. Stennis. Mr. President, I was at a stopping point here, anyway. I think that outlines the main points of this amendment. Under those circumstances, I yield the floor.

Mr. Leahy addressed the Chair.

Mr. Leahy. Mr. President, we are daily confronted with difficult and many times unsolvable crises of immense magnitude. But few penetrate to the central nature of life on a planetary basis. We are not often called upon to tamper with the ultimate questions of our environment in a sweeping, potentially final stroke.

I think of the Endangered Species Act in this grand scale. This landmark law, passed in 1973 after 8 years of hearings, must not be altered by weakening amendments. I believe the 1973 act is a responsible, flexible, meticulously drafted, and efficient framework that can turn back the trend toward annihilation of this Nation's integral natural treasures, our plants, and animals.

The Endangered Species Act has worked, proven itself in over 4,500 cases of successful consultations and resolutions. If we act at all, we should strengthen, not weaken the existing law.

Ultimately, Mr. President, we are the endangered species. Homo sapiens is perceived to stand at the top of the pyramid of life, but the pinnacle is a precarious station. We need a large measure of self-consciousness to constantly remind us of the commanding role which we enjoy only at the favor of the web of life that sustains us, that forms the foundation of our total environment.

With all due respect to the planning and construction and millions of dollars invested in the Tellico Dam I find the conflict with the snail darter no reason to emasculate the Endangered Species Act. After examining the facts and history, I find that the law works.

We might say the culprit is the Tennessee Valley Authority, not the small fish discovered in 1973.

Against the backdrop of our huge marble monuments and countless bureaucratic offices along Pennsylvania Avenue, the now notorious snail darter is dwarfed. Perhaps our perspective is warped if we belittle the very existence of an animal. Every time we tinker with the tender framework of life, there is a reaction, no matter how slight. We exist on this orbiting globe locked and joined with the environment. In a larger sense, we share the planetary gene pool with that snail darter in the Little Tennessee River.

I see the Endangered Species Act as the hub from which all our environmental protection and ecological awareness incentives radiate. I see an attack on the Endangered Species Act as a reversal of all we have learned in the past two decades about man's place on the Earth. No matter how I look at the issue, a dam is transitory, but extinction of a species is eternal.

Mr. President, we must draw the line somewhere. There comes a time when even valid arguments of jobs, money already invested and local politics pale against the imperatives of a species in jeopardy. I draw the line when a type of animal or plant will, by the actions of man, be wiped from the face of the Earth.

In particular, I would oppose any amendments that leave to the discretion of the agency involved the question of whether to proceed with a Federal project where a species is endangered. An amendment of this type borders on the absurd. Even where the threatening project is a private undertaking with some Federal funds or one which requires a Federal permit, any conflict with an endangered species must be deliberated under the existing act.

Would the Tennessee Valley Authority have balked at disturbing the snail darter, along with 16,000 acres of fertile farmland if not for the Endangered Species Act? An amendment granting more discretion to the sponsoring agency would pit whim and political fashion against national priorities and give whim the upper hand.

I also oppose amendments to add a grandfather clause to the present law. And I firmly oppose amendments that would exempt whole classes of projects from compliance with the act. Here we run the risk of sanctioning projects despite their irreversible harm to habitats supporting whooping cranes, grizzly bears, bald eagles, peregrine falcons, and others.

A grandfather amendment would totally undermine the good faith consultation process inherent and successful in the act. Through faithful and determined consultation, even projects as much as 80 percent complete can be modified to preserve and protect endangered species. Grandfather clauses, in virtually every form, would lead directly to the needless extinction of unique forms of life.

The United States does not stand isolated in the community of nations who all face ultimate environmental questions. The way we relate to our fellow species is a global, even universal, crisis. Right now this country is leading the planet in coming to grips with our power and responsibility to deal with reason and compassion to live in harmony with the plant and animal kingdom.

I am aware that certain of my colleagues, renowned for their constant, dedicated efforts to protect and preserve our environment, have concluded that the act is at present too inflexible. I remain unconvinced that this environmental law is flawed enough to weaken its intent and application.

We can balance our need for development with our responsibility to the land and other life forms. We can grow as a society based on economic growth and coexist in harmony with the world. I am not opposed to responsible development. But no amount of environmental backlash now in vogue can convince me that an entire species should be extinguished to make way for a Federal project.

Mr. President, I thank the Senator from Iowa.

The **Presiding Officer**. The Senator from Iowa.

Mr. **Culver**. Mr. President, I rise in opposition to the amendment that is offered by the distinguished Senator from Mississippi.

Mr. President, today, in 1978, the members of any elected representative body, as well as public officials and those chosen for leadership responsibilities anywhere throughout the world, are increasingly challenged, intimidated, and in fact, frustrated by the ever-increasing complexity and enormity of the public policy problems that they are called upon to address.

We live at a time, as well, where the speed of events and the explosion of knowledge only additionally compounds that problem.

Mr. President, we live at a time where we are increasingly aware that our resources are not infinite, but finite, that our margin of error is no longer what it was at an earlier day. The consequences of our own fallibility are much more serious in their implication to perhaps even the survival of human life through decisions of each and every one of us individually and collectively as a body.

We are also increasingly aware of the unprecedented interdependency of all these questions and all these issues.

When I speak of that new set of challenges to each and every one of us, in my judgment, no issue—no issue—more starkly poses that situation than the one which we are addressing ourselves today because this question goes to some of the most difficult, unfathomable questions that have always confronted mankind since the initial discussions and rational discourse.

Those questions, Mr. President, are very fundamental ones. They go to the nature of our universe. They go to the nature of our ecosystems, and our biosphere. They go to basic questions of "What does it all mean" and whether one is intellectually and spiritually persuaded that what we experience in life is the result of some divine creation and guiding hand, or whether one believes that we are witnessing a process of natural selection.

We all have to agree that it is a most incredible and awesome thing that we are witnessing, something for which we lack, to an embarrassing degree, to an intimidating extent, genuine comprehension and understanding.

Mr. President, I am reminded of a quote by Winston Churchill in an earlier day when he made reference to the difficulty of forecasting any possible action of the Soviet Union. He once observed that "It is a riddle wrapped in a mystery inside an enigma."

Mr. President, the same thing can be said, for the most part, about the world in which we find ourselves today.

Now, what we do know for sure, Mr. President, is that in the evolution of life forms in flora as well as fauna, there is a beginning, when species and subspecies are created or evolved, they flourish for a time and then they disappear from the earth.

A Nigerian chieftain once observed:

> I conceive that land belongs to a vast family of which many are dead, few are living and countless numbers are unborn.

Mr. President, whether we speak of mankind, whether we speak of animals, whether we speak of the Furbish lousewort, whether that period of flourishing and survival is 1 year, 1 second, or 200 million years, the species will no doubt die sometime in the natural process of extinction.

Mr. President, we are advised that this process of natural extinction is being accelerated. But it is of even a graver concern to us that the unnatural acceleration is the result of the actions of mankind on the natural, pristine environment, and the consequent degradation and threat to the viability of our ecosystem, about which we know so very little.

Mr. President, we are also advised that in prehistoric times—in prehistoric times—one species was extinguished approximately every 10,000 years. But around the year 1600, we learned that one species was extinguished every 1,000 years. Today, Mr. President, it is now estimated that from 1 to 20 species are extinguished from our global environment every single year.

Mr. President, these estimates are subject to considerable debate and discussion, but the thrust and the implication of these trends are undeniable.

We know there are some 2 million species of plant and animal life in the entire world. Now we also know that of that total number biologists estimate some 200,000—200,000—may be endangered or rare today.

Mr. President, in addition, many more will be extinct before we even know they exist because, our knowledge of biological science is so tragically behind the pace of destruction that mankind has unwittingly, unknowingly, and sometimes even, yes, consciously undertaken.

Mr. President, the cause of our accelerated pace of natural extinction is man, and it is a particular problem today because our knowledge of the biological implications of these activities which accelerate the process of extinction is so woefully inadequate.

We know that this rate is in part attributable to the consequences of commercial hunting and fishing. We know that this rate of acceleration is attributable, to some extent, to the toxic poisons that an industrial society pumps and pours into our land, into our water, and into our air.

We know that the process of extinction occurs to some extent as a result of the destruction of our forests, the alteration of our water tables, our slums, our ghettos, and, yes, even our shopping centers and our suburban development. All these consequences of so-called civilization, and progress, and society carry with them the potential systematic destruction of our ecosystem.

Mr. President, man's ability to intensify and increase his capacity to destroy, degrade, and damage the environment never has been as great as it is today. It is estimated that because of bulldozers, because of cranes, because of warfare and our sophisticated capacity to destroy each other and our natural environment, it has increased some 20 times over the last 50 years.

What is the responsibility of those of us who have an obligation, as stewards of this land during our own short cycle on this Earth, before we, too, are extinct? What is our responsibility to those generations yet unborn, and why should we be concerned about toxic pollutants in the air and in the water? What difference does it make? Why should we be concerned about it? It may cost us. We may waste $10 million in appropriations. We may have to stop a dam. We may have to stop a highway. We may have to alter the course of a flood control project. What difference does it make?

Mr. President, as the distinguished Senator from Mississippi has said, it does on the surface seem stupid to have something like a snail darter, some crazy bat, some crayfish, something called a Furbish lousewort.

So you may ask, when you are talking about Tellico and $117 million, why worry about the snail darter? When push comes to shove, who should win? Which species has the votes in the next election?

Aside from esthetic or ethical considerations, aside from the understandable and natural desire to have diversity and beauty in our world and in our environment, and aside from the continued preservation and existence of these rare and exotic species, it is also true, in my judgment, that we have the ethical and moral responsibility to pass on to future generations, in as pristine a state as possible, what we in turn have inherited, and to increase our knowledge, our awareness, and our sophistication in making discriminating determinations that are informed as to who lives, and who dies, and what are the consequences.

Mr. President, if we are going to allow plants and animals to pass out of existence, the real danger, over and above the esthetic and ethical considerations to which I have made earlier reference, is the fact that we may well be losing things of irreplaceable and incalculable value to humankind, and threatening the continued existence of mankind as we know it today. We are persuaded that even though we do not understand the mystery of this ecosystem, whether by divine creation or some other natural selection process, it is a seamless web of interdependency, possibly with some redundancy. But where and how and when the redundancy exists, we do not know.

Mr. President, some seemingly useless plant or animal might prove to be of value. We have long lists of some 600 species today which are designated as rare and endangered. We have another 2,000 waiting to go on the list. But which among those is critically important and has the kind of value to which I refer?

There is a species called the horseshoe crab. The horseshoe crab has lasted 200 million years, and it was only 3 years ago—after it was 200 million years old—that a scientist finally discovered that it had value to mankind. It was discovered that the blood of horseshoe crabs is a valuable detector of toxins in intravenous fluids.

Chemicals that have been discovered in plant life also have proven to be useful in the development of birth control pills. We are seeing countless examples in which science is beginning to find value in what heretofore had been viewed as a useless and inconsequential species, which stood in the path of mankind's pathological pursuit of progress.

Also, Mr. President, we know that each of these species and subspecies, in some mysterious way, is part of a larger gene pool for breeding, or has medicinal value we may not yet have discovered.

Biological science is barely beyond its infancy. We know there may be redundancy in this creation, in this product of evolution, but we do not know enough to understand which should be destroyed, which should be saved.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 28 minutes remaining.

Mr. CULVER. How much time have I used?

The PRESIDING OFFICER. The Senator has used 17 minutes, The Senator from Vermont has used 4 minutes. The Senator has 24 minutes remaining.

Mr. CULVER. Mr. President, increasingly, scientists and environmentalists are coming to the conclusion that destruction of the species is directly related to the viability of the human race itself; and endangered species are really nothing more than an early warning system identifying that human habitat which, by its destruction and demise, is a threat to the environment of the continued human community as we know it today.

Mr. President, in 1973, much to the credit of Congress, it determined that we should stop this unenlightened, this indiscriminate destruction of that natural habitat, and Congress overwhelmingly passed the Endangered Species Act of 1973.

In fairness, it should be pointed out that this act has worked reasonabily well—in fact, remarkably well—given the enormous complication of its implementation and administration. There have been some 4,500 consultations to balance off the need to preserve and protect these endangered species against other activities of the Federal Government.

Our committee, by way of routine oversight, began to review this bill last summer.

It came to our attention that the rigidity and the inflexibility of that act, whereby the endangered species, once designated, in every case was to be given exclusive priority against any other offsetting factors in public interest, were really having consequences of bringing forth pressures for the elimination and the emasculation of the act.

It was the judgment of our committee, after 6 days of extensive hearings, after very careful markup, that it was necessary to give this act some flexibility. We knew that even though Tellico was the most celebrated case, there were at least 12 other major projects in which the effort at consultation and the administrative resolution of conflicts between a project and endangered species had not been resolved successfully.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. CULVER. I will yield when I finish my statement. I will be delighted to yield when I finish my statement because we have time already committed on the bill and I think we have plenty of time today to speak on this.

Mr. NELSON. I am trying to help the Senator correct the record on his last statement.

Mr. CULVER. I am glad to yield to the Senator for that purpose.

Mr. NELSON. I am raising the question on 12 cases which are not going to come to Congress, and I believe the Senator has a letter from Mr. Herbst saying he does not anticipate any problem with these 12 cases. I think the record should show that.

Mr. CULVER. I will be delighted to speak to this point.

What I wanted to make clear to the Senate is that in our oversight process we had official indications of conflicts from the Fish and Wildlife Service, specifically citing 12 intractable conflicts. I have another letter from them sent when the Senator from Wisconsin received his letter which I think puts a little different slant on things. We can submit both of those for the record.

But the pertinent question for these 12 projects is: Who plays God the second time around?

The Congress is always being criticized for not getting out ahead of problems, for not anticipating, for not positioning ourselves so we can responsibly and rationally deal with the problems before we are blindsided and overwhelmed by events. The Public Works Committee was persuaded after careful consideration that it was inevitable that if not 12, then 10, then 8 conflicts would occur. We have had 4,500 consultations in the last 5 years, but it is estimated we will have 20,000 consultations next year alone. We are going to have 2,000 more plants and animals put on the endangered species list in the immediate months ahead. The potential for conflict is inevitable and unavoidable, and the committee wanted to do something that was responsible and introduce some flexibility into this act.

Mr. President, we have proposed this mechanism which in my judgment represents the most responsible and rational balancing of interests. We have a number of alternatives when these conflicts arise. Should we in the Environment and Public Works Committee be the ones to decide whether the Tombigbee Dam lives or dies? Should we be the ones to decide Tellico's fate after the Supreme Court decision? And should we be the ones to decide on each and every one of these projects in the immediate months and years ahead?

Mr. President, I say, as one who is fervently and devotedly committed to the most powerful protection of our environment and the need to preserve and protect these species, that it does not defy our power of reason to develop a mechanism which, in my judgment, gives us the flexibility we need, and gives it within a context that insulates it from the political pressures that inevitably are going to overpower any other approach. For example, you might have a Governor decide, an agency head, or the Congress, or the President decide.

So, Mr. President, we have I believe set up a system which will afford a very carefully considered process whereby this Endangered Species Committee can weigh the evidence—we have strengthened provisions for consultation—and can reach an informed judgment. The Endangered Species Committee has been weighted in its voting so that the presumption in favor of protection of the species is overwhelming.

Mr. President, I understand the Senate must now vote on the conference report on the Coal Conversion Act. I will reserve my remaining comments until after we complete action on that conference report.

Mr. CULVER. Mr. President, under the previous order, during discussion of this bill, we took out time for consideration of the coal conversion conference report. I was speaking in opposition to the Stennis amendment. I shall reserve our remaining time and ask unanimous consent that I be able to revise and extend my remarks, with some specific objections to that amendment at this place, to follow the remarks that I gave.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CULVER. Mr. President, I shall be calling upon Senator Wallop and Senator Chafee, both members of the committee, who will speak specifically to the particular concerns we have with the Stennis amendment and why we prefer the committee bill.

I reserve the remainder of my time at this time. I understand that Senator Garn wishes to speak in support of the Stennis amendment.

Mr. GARN. Mr. President, just before turning to consideration of the Coal Conversion Act, I listened with great interest to my distinguished colleague from Iowa (Mr. Culver). In his usual eloquent, articulate manner and with great moral fervor, he interjected such morality into this debate that I feel almost ashamed to rise and offer any changes whatsoever to this great act. Nevertheless, I have overcome that and decided to stand up, in any event, despite the fact that I feel somewhat chagrined that I might trample on some rare weed that may not survive because of the horrible actions of Senator Stennis and me.

I do think that it is necessary that we have concern for endangered species—and I do. I have no idea, no reason to want to gut the act or to see it not extended. I think it was very important that the Endangered Species Act was passed in 1973, but I think what we have seen happen is what often happens in Congress. There obviously was a problem. We were building without regard to various species. We were not as concerned about the environment as we should have been. But then we passed an act that goes to the other extreme. It goes too far, and beyond correcting a problem that needed to be corrected, we create side effects that were not foreseen at the time.

Certainly, in 1973, there was a great environmental push. The Endangered Species Act passed the Senate extremely easily, with no dissenting votes. But, talking to many of my colleagues, I learn that they certainly would not have voted for it if they had known the implications and the extremes to which the act would be carried.

I think we need to face the fact that, in 1973, Congress did not say that endangered species were to be protected at any cost. If Congress had said that, it is inconceivable to me that there would not have been more mention of it on the floor or in the committee reports. What little evidence we do have, in the form of a floor colloquy by Senator Tunney, clearly indicates that that was not the intention of the Senate when it acted on the legislation.

There is other evidence: after the bill was passed, the Department of Interior issued regulations implementing the bill. Let me quote a little bit of the regulation (42 FR 4868–9). The regulation makes plain that neither the Interior nor Commerce Department

> intends that section 7 bring about the waste that can occur if an advanced project is halted. . . . The affected agency must decide whether the degree of completion and extent of public funding of particular projects justify an action that may be otherwise inconsistent with Section 7.

It is plain to me that this language reflects the same understanding of the 1973 act that I have. That is that a permitting agency is required to consult with the Fish and Wildlife Service over possible endangered species, but that the final decision remains with the permitting agency. It is in that direction that the Stennis-Garn amendment attempts to go.

I see no reason why we should slavishly accept the Supreme Court's interpretation of what we did, and ratify it, as we have previously done with the Clean Air Act and the Clean Water Act.

We did not intend the extreme result, as I say. I think the Supreme Court, however, was justified in its interpretation. The 1973 Congress did not realize the strictness with which they were putting provisions into this act.

We are certainly not trying to gut the act. I am getting a little bit tired of those who favor the status quo criticizing those of us who want to put some balance, commonsense and reason into the act, so that we do not go back to what existed before 1973. That is all we are trying to do.

I repeat, we are not trying to gut the act. I do not recall anyone who wants to.

We are simply trying to take into account the real world. Man is, after all, part of nature. There is no justification for calling his actions unnatural, whether those actions involve building a dam or a birdhouse.

Beavers happen to build dams, too. I do not know what is any more natural about a beaver building a dam than a man building a dam. Some of the beaver dams I have seen are rather destructive. They are not very environmentally sound. Beavers cut down a lot of trees rather indiscriminately and cause flooding. In some cases, it might be very damaging.

But somehow, things that man does are not natural.

I happen to think that is a little bit of a ridiculous position.

As it happens, man is the only animal endowed by his Creator with rationality, and the ability to foresee the results of his actions, and the ability to learn from them. With that ability comes a responsibility to act in the least destructive manner possible, and to minimize the long-range consequences of his actions.

But I do not see that our ability to see into the future requires us to cease acting entirely. The present Secretary of Interior is named Cecil

Andrus. Out in my part of the country, they think he got his name because he is always saying "cease drilling, cease mining, cease grazing, cease building." I do not see that we really need to stop everything. We do need to take as much care as is possible to evaluate, to consult, to consider, to weigh and balance. More than that we cannot ask, in my opinion, and I think the vast majority of people of this country agree with me.

It is commonsense and balance in considering these things, not hard, fast, inflexible rules that will take into consideration the rights of a furbish lousewart over the rights of man.

All we are trying to do with these amendments is to put a little balance back into the equation.

Some mechanism needs to be found to keep special interest groups from using the Endangered Species Act cynically, for their own purposes. I have talked to a number of "environmentalists" who do not care about some of these endangered species at all. They are using the act as a way to attack the construction of dams, grazing, drilling, mining, and any other activity they think is undesirable.

That is, in my view, an unacceptable use of the act, and certainly not intended by Congress, and one that we, as responsible legislators, ought to be concerned about. Environmentalists are just as much a special interest group as road builders, and they are entitled to no more deference. Just because they use the rhetoric of "the public interest" and claim to speak for the public is no indication that they actually do. Ralph Nader has never been elected. So how is he different from Henry Ford? Both represent special interest groups.

We ought to look at these measures on the basis of commonsense and logic and on the merits and not who is pushing them.

There is no doubt in my mind there are many who will vote against any changes in this act, not because they think the changes are unreasonable, not because they think they are not fair, but simply because they do not want to get on some environmentalist's dirty dozen list, because the environmentalists decide this act is untouchable.

I suggest we consider this on its merits, not on the interests of the roadbuilders, dam builders, or the environmentalists, and use our own commonsense in trying to arrive at some rational decisions.

One of the things we are trying to accomplish here today is to make certain that species are being protected because there is genuine interest in them as species, and not just because protecting them happens to prevent the construction of a dam that a few, unrepresentative environmentalists have decided should not be built.

Not all species are of equal value and importance. The easiest way to make that point is to ask ourselves what we do when the preservation of one species implies the extinction of another. The snail darter, for example, is said to feed on snails, some of which are themselves endangered. I do not know that that is in fact the case, but it is certainly conceivable. If it has not happened yet, it certainly will. What do we do in that case? Probably we will opt for the darter, as a "higher" form of life.

The examples will multiply up and down the phylogenetic chain.

Nature, in her wisdom, or God in His, if you prefer, endowed this creation with considerable redundancy at the lower levels of life.

There may be as many as 10 million distinct species in the world. All but a few of these are insects and plants. Interspecific differences are so minute that a lifetime of study is required to be able to tell them apart.

Mr. President, this kind of redundancy is there for a purpose: So that the loss of an individual species will not be the catastrophe it would be if the species were the only one of its kind. There may be hundreds of species of darters, for instance.

I would be in favor of undertaking tremendous costs to preserve the bald eagle, and other major species, but that kind of effort is out of proportion to the value of the woundfin minnow, or the snail darter, or the lousewort, or the waterbug, or many others that we are attempting to protect.

We should also face the fact that Congress requires certain actions of Federal agencies which may put Federal personnel in violation of the Endangered Species Act.

For instance, under mandate by the Congress, the Fish and Wildlife Service carries out fish planting activities all across the country. Among other places, fish are planted in the Colorado River and its tributaries. There is some evidence that it is this fish planting activity, and not water diversions and withdrawals, that have brought about the endangered condition of the Colorado River squawfish.

In fact, a group of citizens are right now preparing a lawsuit which would require the resolution of this difficulty.

The congressional appropriations in support of the Tellico Dam provide another instance of conflict between the Endangered Species Act and other congressional mandates. We can expect these conflicts to grow in number if the present rigid interpretation of the act is continued.

It will not do to ignore these conflicts. We simply do not have that option. Even if we did, the conflict occurs because man has competing interests, and those interests have to be mediated. The Stennis-Garn amendment attempts to provide a mediating structure that is workable. I do not believe that this Cabinet-level committee created by the committee bill is workable.

That is really all the Stennis amendment is about, to attempt to set up a mechanism that when disputes of this kind come up, they can be mediated and a balance struck, a reasonable, workable position, rather than the hard confrontation we have now between the strict inerpretation of the act and the needs of man to be able to make some of the decisions.

The **Presiding Officer**. The Senator from Wyoming.

Mr. **Wallop**. Mr. President, I rise in reluctant opposition to my good friend's amendment. I do so knowing and sharing full well his frustration over many of the difficulties that have come up with the implementation of this law since 1973.

When the Senator said that he was determined, when the first opportunity presented, to do something about it that was practical and effective, I say that he has done something about it that is effective in terms of the bill—but perhaps less practical.

I say to the Senator from Utah that perhaps the 1973 Congress—and the record will reveal that—did not realize the full intent of the strictness they had achieved in the drafting of the law. There are many assurances and statements in that record to the contrary, which time and the administration have shown to be misjudgments. As is frequently the case on the part of Congress, they misjudged how the bureaucracy would implement this.

When the Senator from Utah indicates that man is the only animal endowed with the ability to make rational judgments, I agree; but he has neglected to say that man is the only animal endowed with the ability to rationalize.

When man begins to rationalize contemporary needs or perceived needs, man sometimes gets needs confused with desires.

What I think the committee tried very hard to do and in my judgment, successfully achieved, was to provide a mechanism whereby man—or in this case, the Government of the United States—would be triggered into a responsible judgment that if we were, in fact, going to condemn a species to extinction or to further endangerment, we would do it consciously, not by accident, not by rationalization, and not by default. I suppose that is where one has to take a look at the amendment of the Senator from Mississippi and come down in opposition.

First of all, it establishes two grandfather clauses, one of which is for all projects under contract or otherwise underway in 1973. I think that is an extremely vague legal definition. It seems to me that we would have to take into consideration whether or not a particular project was underway, if it had applied for various Federal permits.

Mr. **McClure**. Mr. President, will the Senator yield on that point?

Mr. **Wallop**. I am happy to yield.

Mr. **McClure**. Is the Senator speaking of the original Senate amendment or the amendment as modified?

Mr. **Wallop**. I am speaking of the amendment as modified.

Mr. **McClure**. Does the Senator from Mississippi agree that there is an ambiguity in what is underway, under the modified amendment? I think that may help us make a resolution of this issue.

Mr. **Stennis**. Mr. President, if I may respond——

Mr. **Wallop**. On the Senator's time.

Mr. **Stennis**. One minute of my time.

I think the matter is cleared up. I point out the language we rely on to show that that matter is cleared up. I refer to this language:

> The provisions of the Endangered Species Act of 1973 shall not be applicable to any project under contract or for which construction funds have been appropriated as of the date of the enactment of such act.

Mr. **Wallop**. The problem is this: Is the entire project under contract, or is it a contract for land acquisition only? The funds appropriated in many instances would not be Federal funds.

Mr. **Stennis**. This says "any project under contract or for which construction funds have been appropriated" as of that date. If it is under contract, I think it would apply either way.

Mr. **Wallop**. Would it apply to any contracts or the total contract project? There is a considerable difference. As the Senator knows, many of these things go in sequential contracts that are not done entirely at one time; nor are their construction funds entirely appropriated in any given year.

Mr. **Stennis**. Is the Senator talking about a power project, for example?

Mr. **Wallop**. Yes—or a highway project. Not all of those are appropriated in any given year.

Mr. **Stennis**. Of course, this relates to the construction, the invasion of a habitat, and related matters. If the contract is for General Electric motors, that is a remote matter. Anything that is a project that has to do with the species for the location involved. That is what is covered here.

Mr. **McClure**. Mr. President, will the Senator yield? I apologize to the Senator for taking his time. However, in reading the first draft of the Senate's amendment, I had many of the misgivings that the Senator from Wyoming has. I think that even the modified Stennis amendment may have some ambiguity, and we should narrow that down as much as we can.

I understand the Senator from Mississippi to intend by his amendment, from the statement just made, that the contract would be a construction contract and not the preliminary engineering or any of the other contracts that might precede the construction phase; similarly, that the appropriation language to which he refers would be the appropriation of moneys for construction—a conscious congressional decision to go ahead with the construction phase of the project.

Mr. **Stennis**. The Senator is correct. If the contract has been made or the money has been appropriated.

Mr. **Wallop**. In any case, it is tighter than the original language, and I grant the Senator that. It caused me concern. It seems to be one more area in which litigation can take place. We do not need to give another living to a lawyer out of this outfit, because we have more than we possibly could do for the next two generations of lawyers.

To resume: The process of consultation has resolved many conflicts in cases which would be exempted by both of the grandfather clauses, and there is no reason to presume that any project cannot be modified to protect a species. The result of this amendment is a presumption that there is no modification possible to achieve protection both of the species and completion of the project.

The existing requirements for assuring against actions which might jeopardize the survival of an endangered species or its critical habitat will be greatly weakened by letting each agency have the sole judgment of the fate of a given species.

On page 2 of the modified Stennis amendment there is a very long and complicated sentence, some 20 inches long. If you take the operating language out of it, you come to a problem. It says in any case involving a determination by an agency head as to what extent such actions should be modified in order to assure that such actions do not jeopardize the continued existence of such endangered or threatened species or modification of such critical habitat of the species, and then it goes on. To qualify that, it will have to balance it against the social, cultural, economic, and other benefits, which is part of the Culver-Baker amendment. But it puts that into a conscious balancing factor, and it fails to do one thing that the Culver-Baker amendment does. That is that the Culver-Baker amendment, as modified by the committee, takes into account the benefits that might be achieved by alternative courses of action.

Mr. President, the Culver-Baker amendment, as modified by the committee, takes into account all those things and puts us into a conscious decisionmaking judgment, something which I think by admission of the committee has been lacking in the existing law the way it was drafted and certainly the way it has been implemented.

So what we have done is go one step further and provide a thoughtful, purposeful, conscious process by which these decisions can be made.

The ultimate effect, Mr. President, of the Stennis amendment would be to badly eviscerate the Endangered Species Act. I know it is an unkind word; I do not mean it is intentional. But the effect of it, not the intent, but the effect is basically to do just that. And it would reaffirm now, I trust, that we have lost our concern for the tragic losses which have occurred as the result of thoughtless and careless actions on the part of man.

What we are trying to do with the amendments that have been drafted to this bill is to put us into a conscious, careful, step-by-step process where we can balance needs of man, needs of progress, needs of economics, and with the rather awesome power that we have in our hands, the needs of survival of a variety of species.

To go on, on page 2 of the Stennis amendment, it states:

> . . . in no event shall such agency be precluded by reason of this act, or any other law from carrying out any such actions involving the construction . . . without regard to whether or not such action jeopardizes the continued existence of endangered or threatened species . . . if such project . . . is at least 50 percent completed.

Again, I point out that there are a number of areas which have gone through the consultation process, with as much as 95 percent in their construction process completed, and have been resolved, the process has been completed, the projects have been saved and the endangered species have been saved. That is what I think the committee has tried to do in the Culver-Baker amendment, and what sadly I think the Stennis amendment fails to do.

Again, I say that I share the Senator's frustrations. But I again say his amendment goes too far, that it does not allow us even to go through the consultation process. It does not allow us even to make conscious judgments, and puts that into the hands of a committee head or an agency head whose basic problem in life is not endangered species but the efficient carrying out of whatever that agency is designed to do.

Mr. President, I yield back the remainder of the time I yielded to myself on the bill with regard to the 5 minutes that I requested that I yield to myself.

The PRESIDING OFFICER. Who yields time?

Mr. CULVER. Mr. President, I yield at this point 6 minutes on the amendment and 4 minutes from my time on general debate, for a total of 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I address myself particularly to the grandfather provisions of the Stennis amendment, and I might say that this amendment really is a blockbuster.

If I might just read the language pertaining to the grandfather section: ". . . in no event shall such agency—"

Let us just say it is the Department of the Interior, the Corps of Engineers, or whatever it might be.

. . . in no event shall such agency be precluded by reason of this act or any other law from carrying out any such actions involving the construction or other establishment of any project or part thereof, without regard to whether or not such action jeopardizes the continued existence of endangered or threatened species or would result in the destruction or modification of critical habitat . . .

You can do all of those things, get rid of species if such project or a part—now here it gets difficult—"if such project or a part"—I suppose that means any facet of the project—". . . is at least 50 per centum completed based upon the amount expended."

Mr. President, let us take the case of the Tellico Dam. That is what brought this issue here, I believe. In the Tellico Dam the greatest part of those expenditures were for the acquisition of the land. Let us assume they were for the acquisition of the land for this discussion. So, under Senator Stennis' amendment in a case where you bought a considerable amount of land and the land amounted to 50 percent of the total cost of the project, if no concrete has been poured, nothing irretrievable done, nonetheless, the project could still go ahead full blast. Again we are not talking about different kinds of species. We are talking about any endangered species. So it could be the bald eagle or it could be the grizzly bear or it could be any one of these marvelous mammals that we recognize and applaud, and I think everyone would agree should be there.

But, if 50 percent of the money is spent just for land, nothing done, no bulldozers coming in yet, on they can go regardless of what the damage might be.

And that in my opinion, Mr. President, just does not make sense, to leave that up to the head of the agency.

The second part of the grandfather clause, Mr. President, says, and I shall read it:

The provisions of the Endangered Species Act of 1973 shall not be applicable to any project under contract or for which construction funds had been appropriated as of the date of such act.

Again, we have a situation where we could well have had the funds appropriated before the passage of this act and then all kinds of endangered species could show up.

But the Endangered Species Act would have no effect whatsoever under the language of this amendment's second grandfather clause.

I just do not think that we want to go that far in giving the liberty, the power, to an agency or to the Federal Government, that great big monster called the Federal Government, to plow ahead just because some funds had been appropriated or the project was under contract. Apparently the people of the Nation through their elected representatives want this act on the books in order to protect endangered species.

Certainly I feel that following that grandfather provision of the Stennis amendment would be extremely dangerous.

I particularly call attention to the fact that nowhere in these grandfather provisions do we deal with the nature or the value of the project. It might be a little project that is not really of extreme significance. Even as to the Tellico Dam, which brings us here today, there is considerable question as to whether it is all that valuable. But let us not get into a debate on the Tellico Dam. All we know is that under these grandfather provisions in no manner whatsoever do we consider the nature or the value of the project. We do not consider how far along the construction is, as far as concrete goes, or anything irretrievable done. Half the money could have been spent for the land alone. And we give no consideration to the species involved. There have been a lot of jokes in the Chamber here about the snail darter and how we should pay no attention to it, how it is of no consequence.

I do not agree with that. But let us assume that some people think the snail darter is of little consequence. Certainly some of the major species that could be affected by an action at least should be taken into consideration. But under this Stennis amendment, the grandfather clause, they are not taken into consideration whatsoever.

So, Mr. President, based on those two provisions alone, I strongly recommend that the amendment be rejected.

I yield back to the Senators who control the time.

Mr. Stennis. Mr. President, I yield 5 minutes to the Senator from Idaho.

Mr. McClure. I thank the Senator for yielding time.

Mr. President, I shall comment a few moments, if I may, in a rather general sense on what we are trying to get accomplished here today, as I see it.

I was one of those who supported the Endangered Species Act and continue to support it, and anything that I say today must be against the background that I still believe that the thrust of the act is correct and that if we have to resolve doubts we should resolve them in a procedural way in favor of the endangered species. I think the fact that we are here today amending the bill indicates one of the problems that was inherent in the original legislation.

That was that it cannot admit of any judgment or at least did not admit of enough judgment.

There are three or four places where a judgment must be exercised. First of all, under the act there must be someone who petitions for the designation of a species as endangered. That is a judgment, a scientific judgment, which then must be made by a panel which makes the recommendation to the Department to the Secretary of the Interior, who must make the final judgment on the designation of the species as endangered or threatened.

That has been by the Secretary and under the law considered to be simply a scientific judgment. Is it a matter of scientific fact? It has not really been used at that level to exercise any judgment as to whether or not it is a significant species. It is just a question of is it a unique species.

My friend, Senator Chafee, has suggested that the snail darter as such may or may not be an important species, but that is not admitted of judgment under the act and, perhaps, properly so. But no judgment can be applied.

It can be argued, and perhaps should be argued, that with 130 different species the threatening of one of those minute variations is not of such great significance as to invoke the protection of the act.

But so far, at least, that judgment has not been applied.

It has been suggested by my friend from Wyoming that the amendment offered by the Senator from Mississippi will not admit of any kind of negotiation. Well, it does not require negotiation, but it certainly admits of it. It is quite possible that the negotiation would go forward, although under the grandfather clause it would not necessarily require it.

I think there would be a great amount of political and moral suasion used if a significant species were endangered by the action even though the law did not require it. I am sure they would try to find some alternative. But I would certainly agree that in the past that was not the case. If they were not required to they did not look at alternatives. If they were not required to they did not see if there was a way to avoid the destruction of the species.

The question then in my mind comes down to whether or not the amendment by the committee injects enough discretion or whether the amendment offered by the Senator from Mississippi admits of too little discretion. The truth, as is usually the case, lies somewhere in between the two rather than one being absolutely good and the other absolutely bad.

There is another discretion that must be invoked after it is on the endangered species list, and that is what is a critical habitat for that species. There is nothing that really admits of the kind of discretion that I think ought to be exercised in balancing on the designation of critical habitat.

When it comes to the extension of habitat we run into some very, very unusual problems. My friends on the committee have heard this story too often, and I am not sure it ought to be repeated, but the grizzly is on the endangered species list, and certainly it is endangered in some areas but I can tell you it is not endangered in Yellowstone National Park.

As a matter of fact, the problem is that they are up to their waist, if not in aligators, in grizzly bears.

Grizzly bears and human beings do not cohabit well together, and since we stopped feeding grizzly bears in Yellowstone National Park, they are hungry, and hungry bears do what hungry bears do all over, they go looking for food. Sometimes they look for it in the picnic baskets; sometimes they look for food with people in cars who are in the parks; sometimes they cross the boundary and leave the park and look for it elsewhere.

That happened in my State where adjacent to Yellowstone National Park a grizzly bear, unknowingly, he did not see the signs and did not see the boundary markers, walked right out of the park and walked into an area where human beings have been living for years and grizzly bears have not been living for years.

An old couple in their cabin heard this bear at their door trying to break into their cabin. They tried to scare it away and it would not scare away because it was in absolute possession of its faculties and it knew it was bigger and stronger than and old couple, so it stood outside that door and continued to try to break it.

Finally, the old man took a gun off the peg above the fireplace and shot the bear to protect himself and his wife.

The Federal Government in that particular instance said bears are more important than human beings, and that a threatened human being was not as important as a threatened member of a threatened species and therefore, the bear must have preeminence in that man's cabin.

I do not believe that, and I do not believe my friend believes that. As a matter of fact, there is an escape clause in procedure if not in law, and that matter was tried through a local jury. The local jury thought the law was unreasonably inflexible, and the old man was exonerated even though the law makes no specific provision.

You would think that would be the end of the matter, but it is not, because the Federal Government, being so disturbed by the fact that the jury thought the man should be more endangered than the bear, has brought suit against him under the civil penalty clause.

My friends, that is ridiculous, absolutely and totally ridiculous, and it is that kind of ridiculous enforcement of the law, with no flexibility in it, that leaves us to seek solutions here on the floor of the Senate today through amendments to the act.

Whether the Stennis amendment is adopted, or some other, we need to have some flexibility on the designation of a species as a critical and threatened species. We need to have some flexibility on the designation of the critical habitat and the extension of the habitat. We have to have some protection of human beings involved in defense of themselves under circumstances such as I have given.

If, as a matter of fact, they act reasonably, why should they be permitted to kill another human being in self-defense but cannot kill a bear in self-defense? That kind of ridiculous application of the law obviously needs some rectification, and I hope before we finish the deliberation here we will have been able to achieve that.

I again thank the Senator for yielding.

Mr. STENNIS. Mr. President, I thank the Senator very much for his remarks.

Mr. President, I do not have much time left and I am going to be brief anyway.

I want to say this with all the emphasis that I know how. We need not fool ourselves. This is a new start since the Supreme Court of the United States held like they did and when they did some few weeks ago. There will be a great onrush now, in my opinion and in the opinion of others, to bring about the application of cutting off these endeavors of various kinds, making it applicable to this very, very overwhelmingly strict law from which there is really no appeal except what might be offered by the committee amendment, and I will come back to that in a moment.

So let us not fool ourselves now. We marched in here in 1973, and I with great respect submit it as an illustration, with the great number of laws, voluminous and far reaching as they might be, that we have to pass on here each year when the membership at large does not have much opportunity to know all that is in them, carrying such far-reaching penalties on business and on people and on every enterprise.

I mention business because when this matter really picks up now it is going to affect jobs; it will affect jobs throughout our Nation adversely. It will cut off jobs on public works, public functions, and a great host of other things that have to do with construction or change of the environment. There is no way to dodge that.

As I understand, they estimate 20,000 hearings will be involved or will be considered. The officials will be called on to pass on those matters, on that many cases, in 1 year's time, as I understand the facts.

Now, we all admit that this is an intolerable law as it is, and the committee agreed wholeheartedly with that. They submitted here, I believe, a unanimous amendment, but one written up and recommended before this Supreme Court case was decided.

So my point now is that the committee amendment admits error in the bill. It says something must be done about it, but, with great deference, it does not go far enough, whereas the amendment now before us, that we are passing on here, goes too far.

Well, you do not get perfected language written out for presentation here in the hurly-burly of debate, and so forth, and that is one good thing about an amendment; it can be cleared up or clarified and made publicly acceptable by these committees that will work on it.

So that is a part of the process. The bill has got to go to the House anyway. They have not voted out a bill yet.

But I say this will prove to be one of the most important measures, considered from either viewpoint, that we in our committee will pass on this year. Our committee will work further on it, I am sure. They are concerned about it, I am sure. But let us not just accept the finding here of a plan to create a committee to pass on it that requires five out of seven votes—five out of the seven votes on this committee or commission before the petitioner is going to get any kind of relief. Five out of seven, and two of those are professional environmentalists. It is a great profession, and there is nothing except honor attached to it, but at the same time, they will naturally lean in the other direction. Also the Secretary of the Interior is presently a very estimable man, but it is an office that, by its nature, has that same leaning.

So let us not fool ourselves. We are not setting up here an impartial commission that is going to make decisions by a majority vote.

Another thing about it is that it is written on the face of their amendment that a matter of local import only will not have any standing at all before this group. It must be either regional or national. We are shooting here, in this amendment, at a goal. Our goal is to cover the Nation and then, at a more appropriate time for preciseness, that language can be gone over and the kinks gotten out of it.

But I plead now and I urge consideration far beyond what was done before, when this bill passed not unlike passing a bill on a morning calendar call, a casual thing to do, the nice thing to do, when it was passed in 1973.

In the light of experience, in the light of the practical side of things, and in the light of this Supreme Court decision, it is found to be inadequate, and it is found that the courts cannot do anything about it, or did not do anything about it. I do not think they had any grounds to read in any discretion.

This amendment would provide some discretion, some flexibility, some exercise of power, not for or against any particular group, but that the progress of this Nation from a physical standpoint must go on, and still there will be a remedy. There is a remedy left under this amendment for the proper and reasonable protection of the snail darter, the cranes, and all the other forms, the species and subspecies of animals, plant life, fishes, lizards, and all the things that we have.

I say they have their place, but there are other activities of our human family. The people have to make a living, to maintain an economy, to make money to pay taxes, to solve transportation problems, everything else—that part of our life must go on, too. This law as it is now is crippling, and tremendous extra burdens are put on the taxpayer that I can illustrate here: Building a $100-million dam and finding out at the last minute that it is not within the law; spending $18.2 million for 47 cranes, and 3 years delay on top of all that.

So we can do a better job. One way to get at a better solution is to pass this amendment, and we will be on our way. I hope the Senate will see fit to pass this amendment, and the committee will take it on and work out a stronger and better bill.

I am ready to yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. CULVER. I want to make about a 5-minute statement.

Mr. STENNIS. When the Senator is ready to, we will both yield back our time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CULVER. Mr. President, I would request 5 minutes of time for further debate.

The PRESIDING OFFICER. The Senator has the right to designate his time.

Mr. STENNIS. Mr. President, may we have the yeas and nays?

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CULVER. Mr. President, just a final word before we vote.

In my judgment, the arguments in opposition to this amendment have been very ably outlined by the comments and statements of the distinguished Senator from Wyoming and the distinguished Senator from Rhode Island.

The ultimate effect of this amendment, or really any of its three essential components, would, in my judgment, be to eviscerate the Endangered Species Act. In my judgment Congress should reaffirm on this occasion its very fundamental concern for the tragic and incalculable losses which have occurred as a result of mankind's careless actions and the degradation of the natural endowment of this globe.

However, Mr. President, the Committee on Environment and Public Works recognized, in the course of its oversight work about a year ago, that in the absence of introducing some rational, sensitive flexibility into this important and necessary law, there was a very serious risk of having, in time, a proliferation of irreconcilable conflicts, with the resulting pressures on Congress to weaken the act unnecessarily.

We saw this storm cloud on the horizon well before the Supreme Court decision on Tellico; but clearly that decision reaffirmed our basic concern.

Mr. President, it was for that reason that we carefully prepared S. 2899 to get out ahead of this problem, responsibly and rationally, and avoid a short-term, highly emotional and politically expedient remedy that threatened to undercut and destroy the lofty and noble purposes of the Endangered Species Act, as it was originally enacted in 1973.

Mr. President, this amendment with its grandfather clauses, would have the effect of making any project that was underway before the enactment of that law in 1973 protected against any modification, and certainly jeopardize the continued preservation of an endangered species. Mr. President, I have here a list of projects which were initiated prior to 1973. While I have had an opportunity to review them only very briefly, I have counted roughly a minimum of 650 projects under construction by the TVA, by the Corps of Engineers, by the Bureau of Outdoor Recreation, and by the Soil Conservation Service at the time of the signing of the Endangered Species Act. Such projects include flood control, watershed, navigation, erosion control, irrigation, and recreation benefits, among many others.

Mr. President, you never know when you are going to find an endangered species. You do not know the day you put the stamp of approval on the particular project, and you do not know after you have spent $50 million; you do not know how far away that time might be, because in most cases we still have continuingly not developed the necessary biological expertise.

But how about tomorrow? How about tomorrow when that protected species may well be the key to a significant scientific breakthrough, the kind of finding, that can enhance the future of mankind?

Mr. President, this bill, S. 2899, does provide a mechanism that will introduce the necessary flexibility. It is a pragmatic and a realistic recognition of the need to have a mechanism whereby these questions in conflict can be resolved, but only after an exhaustive consultative process, and careful examination of the full range of alternative approaches, alternative designs, and alternative uses. Then and only then, after this thorough process, can that conflict be presented to this committee for ultimate resolution and disposition.

Furthermore, the bill requires that when a critical habitat designation is made, the agency involved can make no irreversable or irretrievable commitment of resources which would preclude the consideration of other alternatives to its project.

Our bill would strengthen the act and the consultative requirements. Once a project agency petitions the Fish and Wildlife Service, one of the parties to those discussions will give their judgment on whether or not there has been a good-faith effort to achieve a mutually agreeable and acceptable resolution of the conflict so as to protect the endangered species to the maximum extent.

If the Service says such a consultation has not taken place, then, Mr. President, the Committee could send the agencies back for additional consultation.

We have tried to design a committee that, unlike ourselves, is relatively free of intense lobbying and political pressures. These can be factors taken into consideration but are not in and of themselves, decisive. This commission will be composed of seven members who are relatively insulated and isolated from those pressures. They are also better equipped by background, training, and expertise to make informed, scientific, knowledgeable judgments, not to be buffeted by the political winds of the moment but to be sober in the implementation of this act.

The bill requires, in any case that five out of seven of those members approve the exemption because they determine that it satisfies some very carefully designed. explicit criteria which insure that the most excruciating and painstaking efforts have been made to reach an accommodation that will protect the endangered species. But, Mr

President, it affords an opportunity for flexibility that is informed, and this is necessary if we are going to balance the appropriate interests which are involved here.

Mr. President, Oliver Wendell Holmes once said that every principle tends to declare itself to its logical extreme but each is, in fact, bounded by the neighborhood of competing principles of policy.

Mr. President, it seems hard to find or think of a case where that observation is more pertinent or appropriate than it is today. The noble principles taken to the logical extreme of the 1973 act, as interpreted by the Supreme Court of the United States in the case of Tuau Hill, clearly are being balanced by competing principles of yet another sort. The real question before this Congress is whether we can act responsibly to adjust, to calibrate, to accommodate that competition of principles within a forum that is best equipped by its very nature and its composition to make intelligent and rational judgments in behalf of the goal of best achieving the basic and fundamental principles implicit in the original act.

Mr. President, this bill does provide a mechanism for balancing such competing values, but it does so in a responsible and rational way. For this reason I respectfully urge the defeat of the Stennis amendment because, in my judgment, it would have the consequence of fundamentally and basically destroying the original intent and purpose of this act. The 1973 grandfather provisions take no account of the species involved, the nature, or the value of the project, or the extent to which it could be modified.

Finally, Mr. President, we know that consultation has already resolved many conflicts in cases which would be exempted by the Stennis amendment. There is no reason to assume that any project cannot be modified to protect the species. This is true regardless of the year the project was initiated or its stage of completion.

Mr. President, I urge the defeat of the Stennis amendment because it does not provide the criteria upon which the appropriate balancing of these very important competing environmental, social, economic, and political values should be ultimately weighed.

The Presiding Officer. The question is on agreeing to the amendment of the Senator from Mississippi. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Cranston. I announce that the Senator from Hawaii (Mr. Inouye) is necessarily absent.

Mr. Stevens. I announce that the Senator from Texas (Mr. Tower) is necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 22, nays 76, as follows:

[Rollcall Vote No. 220 Leg.]

YEAS—22

Allen
Bartlett
Burdick
Curtis
DeConcini
Eastland
Ford
Garn
Goldwater
Hansen
Hatch
Helms
Huddleston
Laxalt
Long
Morgan
Scott
Sparkman
Stennis
Stevens
Thurmond
Young

NAYS—76

Abourezk
Anderson
Baker
Bayh
Bellmon
Bentsen
Biden
Brooke
Bumpers
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Case
Chafee
Chiles
Church
Clark
Cranston
Culver
Danforth
Dole
Domenici
Durkin
Eagleton
Glenn
Gravel
Griffin
Hart
Haskell
Hatfield, Mark O.
Hatfield, Paul G.
Hathaway
Hayakawa
Heinz
Hodges
Hollings
Humphrey
Jackson
Javits
Johnston
Kennedy
Leahy
Lugar
Magnuson
Mathias
Matsunaga
McClure
McGovern
McIntyre
Melcher
Metzenbaum
Moynihan
Muskie
Nelson
Nunn
Packwood
Pearson
Pell
Percy
Proxmire
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Stafford
Stevenson
Stone
Talmadge
Wallop
Weicker
Williams
Zorinsky

NOT VOTING—2

Inouye
Tower

AMENDMENT NO. 3245, AS MODIFIED

(Purpose: To prohibit exemptions which would violate international treaty obligations of the United States)

Mr. Pell. Mr. President, I call up my amendment No. 3245, as modified.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. Pell), for himself, Mr. Weicker, Mr. Case, and Mr. Cranston, proposes amendment No. 3245, as modified.

Mr. Pell. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 9, between lines 16 and 17, insert the following:

(14) Notwithstanding any other provision of this Act, the Committee shall be prohibited from taking under advisement, or in any way considering for exemption, any application made to it, if the Secretary of State, after a review of the proposed Federal action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any submission made under subsection (d)(1) of this section, that the granting of any such exemption and the carrying out of such proposed action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

Mr. Pell. Mr. President, the amendment which I am proposing on behalf of myself and Senators Case and Cranston a modified version of my amendment No. 3245, submitted yesterday, simply would amend the bill pending before the Senate to prohibit the Endangered Species Review Committee from taking under advisement any application submitted to it for exemption, which the Secretary of State has reviewed and determined is, or would be, in violation of an international treaty obligation of the United States.

As my colleagues are aware, the United States has entered into several treaty obligations with other nations which seek to protect endangered species, such as the Migratory Bird Treaty of 1909 with Canada, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere signed by the United States and 16 Latin American nations, and most recently, an international agreement with the Soviet Union designed to protect 208 species of migratory birds.

Mr. President, as chairman of the Foreign Relations Subcommittee which has jurisdiction over international environmental matters, I am very much concerned that the United States honor its commitments under treaties and conventions such as these with respect to the protection of endangered species.

The amendment which we are proposing is simply to assure other nations with whom we have such treaties and agreements that, although the United States may at some point in the future exempt certain projects or actions from certain provisions of the Endangered Species Act, we have no intention of considering for exemption an action or project which is, or would be, in violation of an international treaty or other international obligation affecting endangered species.

Mr. President, because I believe it may be possible for an application to reach the Endangered Species Review Committee which might potentially be in conflict with an international agreement, I think the pending legislation is a proper forum for assuring other nations that such applications will go no further, and this amendment makes that assurance.

It is vitally important, as my colleagues know, that the United States stand by its commitments under these obligations and even one violation of an agreement made in good faith between the United States and another nation should not be permitted by any Federal action. This amendment is simply an insurance policy, written into the law, that no such violations will occur.

I hope the Senate will act favorably on this amendment to uphold those commitments to other nations.

Mr. President, this amendment would simply stress the fact that we intend to abide by our treaty obligations. When we have signed a specific treaty with another nation—for example, as we did with the Soviet Union concerning migratory birds just last week—with regard to one of those examples of wildlife that are covered by such a treaty, we cannot move by domestic law in violation of that treaty obligation; and the Department of State is limited to 60 days to put the committee on notice that this project will endanger a species that has been protected under treaty law. It does not really change the law. It simply emphasizes the fact and reassures foreign nations that we are not going to go ahead through exemptions to domestic law in violation of international treaties.

Mr. **Magnuson**. Mr. President, will the Senator yield?

Mr. **Pell**. I yield.

Mr. **Magnuson**. A good example of that would be the whooping crane, which goes into Canada. We have a protectionist treaty with

Canada with respect to that bird. There are some species of rare ducks about which we have treaties with Mexico and Canada.

Mr. PELL. Those are excellent examples of what I am talking about.

I have talked with the manager of the bill, and I understand the amendment might be acceptable to him.

I am willing to yield back my time.

The PRESIDING OFFICER. The Senate will be in order.

Mr. WALLOP. Mr. President, the Senator is nearly correct. It might be acceptable.

I ask the Senator if the species on international treaties are subject to the prohibition of section 7.

Mr. PELL. They would be, if they are the subject of an international treaty.

Mr. WALLOP. One of the problems I have with the amendment as drafted is the language "taking under advisement." It seems to me that limits them totally. They cannot even consider that on the basis of a finding by the Secretary of State. The language reads:

> The committee shall be prohibited from taking under advisement or in any way considering for exemption any application made to it.

It seems to me that the committee easily could be allowed to take something under advisement, to make a determination on its own.

Mr. PELL. The prohibitions under this section do not apply to those that are covered under this section.

Mr. WALLOP. They do not?

Mr. PELL. Under the convention, they do not apply. This is what I am informed. I have not read it.

Mr. WALLOP. Does the Senator agree that the language prohibiting them from even taking something under advisement is not in violation of an international treaty?

Mr. PELL. I agree that is not in violation of international law, to consider a violation of international law. The only violation is if you violate it.

Mr. WALLOP. What I mean to say by raising the point we are talking about is that it would seem that the Secretary of State might not even be aware of it unless the committee had taken it under advisement. It might be that the process we are trying to devise is something that would clear with the Secretary of State those endangered species that might be on the international list.

Mr. PELL. Perhaps if we eliminate the words "taking under advisement"——

Mr. WALLOP. I honestly think that would be useful to the amendment and would get to what we are trying to do, because we do not want to involve this committee in trying to destroy the international treaty arrangements of the United States. It seems to me that that is a process that might take place inadvertently, as it were.

Mr. PELL. Why do we not eliminate the words "taking under advisement or in any way"?

Mr. WALLOP. I think that would make the amendment acceptable.

Mr. PELL. I do not think I need unanimous consent. I ask that the amendment be so modified, Mr. President, and I ask for a vote on the amendment.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. Culver. Does the Senator really desire a vote on the amendment?

Mr. Pell. Just a voice vote.

The Presiding Officer. Will the Senator send his modification to the desk?

The modified amendment is as follows:

(14)(A) Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption, any application made to it, if the Secretary of State, after a review of the proposed Federal action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any submission made under subsection (d)(1) of this section, that the granting of any such exemption and the carrying out of such proposed action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

The Presiding Officer. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. Wallop. Mr. President, I ask unanimous consent that Donna Maddox, of Senator Percy's staff, may have the privilege of the floor during debate and votes on this measure.

The Presiding Officer. Without objection, it is so ordered.

Mr. Nelson. Mr. President, I should like the attention of the manager of the bill, Mr. Culver.

I understand that there may be three or four amendments that the managers may be prepared to accept, and I would call those up now.

Mr. Chiles. Mr. President, will the Senator yield to me for a moment, for a resolution not in connection with this bill?

Mr. Nelson. I yield to the Senator from Florida, without losing my right to the floor.

The Presiding Officer. Without objection, it is so ordered.

AMENDMENT NO. 3127

Mr. Nelson. Mr. President, I call up amendment No. 3127 and ask for its immediate consideration.

The Presiding Officer. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. Nelson), for himself and Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes an amendment numbered 3127.

Mr. Nelson. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 13, line 24, insert "$750,000", in lieu of "$2,500,000".
On page 13, line 25, insert "$750,000", in lieu of "$2,500,000".
On page 14, line 1, insert "$750,000", in lieu of "$2,500,000".

Mr. Nelson. Mr. President, I modify my amendment to add at the end of the amendment the words: "The chairman of the committee shall furnish a report to the Congress at the end of fiscal year 1979. The report shall speak to the adequacy of the budget authority contained in this amendment."

The Presiding Officer. The Senator will send his modification to the desk.

The modified amendment is as follows:

On page 13, line 24, insert, "$750,000", in lien of $2,500,000".

On page 13, line 25, insert, "$750,000", in lieu of "$2,500,000".

On page 14, line 1, insert "$750,000", in lieu of $2,500,000".

The Chairman of the committee shall furnish a report to the Congress at the end of fiscal year 1979. The report shall speak to the adequacy of the budget authority contained in this amendment.

Mr. Nelson. Mr. President, this amendment simply proposes to cut the authorization for the Interagency Committee from $2,500,000 per year to $750,000 per year.

I think that $750,000 authorization is an ample authorization.

Mr. Culver. Mr. President, the distinguished Senator from Wisconsin has proposed this reduction in the amount of money to be budgeted for the operation of the Endangered Species Committee that will be established by this bill.

The committee had difficulty in anticipating the total amount of money necessary to responsibly, effectively, and properly carry out the intentions of this legislation.

After careful consideration with the minority members of the committee, I think we all agree with the objective of the Senator's amendment—to assure that we are not creating a costly bureaucracy.

I appreciate the Senator's agreement to modify his amendment to require a report from the committee at the end of 1 year. It seems to me that this is a judicious and prudent thing to do. We should have their judgment, after the experience they have had under 1 year's existence, as to the adequacy or inadequacy of this level of funding.

With that observation, I wish to thank the Senator from Wisconsin for making it clear that the Senate is not attempting to establish another costly bureaucracy. It is my understanding that it is acceptable to the minority as well. I move for a vote on its adoption.

Mr. Nelson. I yield back the remainder of my time.

Mr. Culver. I yield back the remainder of my time.

The Presiding Officer (Mrs. Allen). The question is on agreeing to the amendment of the Senator from Wisconsin, as modified.

The amendment, as modified, was agreed to.

AMENDMENT NO. 3129

Mr. Nelson. Madam President, I call up amendment No. 3129 and ask that it be stated.

The Presiding Officer. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. Nelson), for himself and Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes an amendment numbered 3129.

Mr. Nelson. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 12, line 23 change the period to a colon and add the following: "*Provided*, That an environmental impact statement which discusses the impacts upon endangered and threatened species or their critical habitat shall have previously been prepared with respect to any Federal action exempted from the requirements of subsection (e) of this section by such final determination of the Committee.".

Mr. NELSON. Madam President, this amendment No. 3129 simply provides that an environmental impact statement which discusses the impact upon endangered and threatened species or their critical habitat shall have prepared on any Federal action that comes before the committee for an exemption.

This amendment would apply to a very small number of cases, actions which involve wetlands protection under section 404 of Public Law 92-500.

Mr. CULVER. Madam President, if I could just say to the Senator from Wisconsin I respect the intent of his amendment. It does seem to me difficult to imagine a situation actually arising, however, where under the very exhaustive and elaborate consultative processes that are required under this bill a project in irreconcilable conflict could actually get that far along in the process without an EIS being prepared.

But I do believe that the amendment essentially corresponds with the intent of the committee, and I do not personally have any objection to it. Perhaps the Senator from Wyoming would want to speak to this amendment.

Mr. WALLOP. Madam President, if I may engage the Senator in a dialog here, it is probably true, as the Senator from Iowa stated, that it is difficult to imagine any set of circumstances in which the impact statement on endangered or threatened species will not have been prepared.

But the Senator from Idaho, as the Senator may know, is concerned about the requirement or lack of requirement presently for an environmental impact statement regarding the designation of a critical habitat right now.

I asked the staff if they will try to locate him, because I think it is important to try to get all this discussion in at the same place.

The part of the amendment that troubles me, and I wish to have the Senators' comments on it, is not the impact on the endangered or threatened species but the phrase "or their critical habitat shall have previously been prepared." It strikes me that that may not have been the case in terms that the Senator from Idaho is looking at right now.

I wonder if that phrase is necessary after all the mandates and the requirements for consultation and findings that are necessary before anyone can even get to the Commission.

Mr. NELSON. I think the Senator from Wyoming and the Senator from Iowa are correct, that it would probably be an unusual case—it may even be a rare case—but in all cases other than those involving wetlands there has to be an environmental impact statement.

There may be a Federal dredge and fill project involving a large marsh. The project may adversely affect the habitat of an endangered species. This amendment provides that an environmental impact statement (EIS) would have to be filed before the committee acted. All other projects, actions other than 404 projects will have an EIS for the committee to review. It is not an additional requirement.

Mr. **Wallop**. I guess if it is the Senator's intention to limit this to that which has been designated critical habitat as well as the endangered or threatened species itself and not necessarily the range, I think it is acceptable.

But if it is not the Senator's intention to limit it to a habitat that has been designated, I think it would require a little bit of discussion as to what the intent was.

Mr. **Nelson**. All this amendment does is require that any 404 project, for example, would have an EIS, just like any other project before it went to the committee. Under the law (Public Law 92–500) 404 permits exempt from filing an EIS statement in certain circumstances.

Amendment 3129 does not require all 404 projects to have an environmental impact statement but only those in which an endangered species was involved, and in which there was an appeal to the committee created by the Culver-Baker amendment. So everybody, therefore, respecting endangered species involving Federal projects is treated exactly alike.

Mr. **Wallop**. Then I wonder, if the Senator is talking about designated critical habitat, and I wonder if that would not be perfecting language, rather than leave it for an interpretation?

Mr. **Nelson**. What does designated critical habitat mean?

Mr. **Wallop**. Right now the Secretary of Interior designates critical habitats.

Mr. **Nelson**. I do not think it ought to be expanded to say "designated." I think this amendment simply proposes to treat this kind of problem exactly the same way as all other problems that would finally get to the committee under the pending amendment. It involves a dredge and fill of wetlands, which may be a critical habitat of a threatened species, and all it says is that these actions have to have an EIS.

Mr. **Wallop**. I do not quarrel with the intent of the Senator. What I am suggesting is that we do not want competing entities designating critical habitat. There is a carefully constructed entity which now designates them, and it would seem to me we do not want a court interpreting it or designating additional or lesser land as being critical habitats. That is why I suggested that as long as we are dealing with the structure of the bill as it exists and the law as it exists that the Secretary is the one who designates the critical habitat.

It would seem to me we want to limit the effect of what the Senator is trying to do in both directions, both with respect to interpretation by the court that a critical habitat might be smaller or an interpretation by a court that a critical habitat might be larger. I do not think it does violence to the intent of the Senator. I think it does exactly what is prescribed right now in the law and brings in the additional 404 requirements that he seeks.

Mr. **Nelson**. Madam President, as I understand, the Senator from Wyoming proposed a few moments ago to add the word "designated." Where would that change appear in his amendment?

Mr. **Wallop**. Prior to the words "critical habitat."

Mr. **Nelson**. Is it agreeable to the Senator that we accept this amendment, with a discussion that makes clear what we are talking about?

Mr. **Wallop**. It is agreeable.

Mr. **Nelson**. All right.

Mr. WALLOP. And it would be my interpretation of what the Senator is intending to do that the critical habitat referred to in his amendment as requiring an environmental impact statement would be that critical habitat which has been designated by the Secretary in accordance with the provisions of the Endangered Species Act.

Mr. NELSON. That states it as I understand it, and exactly the way it is intended.

Mr. WALLOP. As limited to that in both directions, to be made neither larger nor smaller by court interpretation?

Mr. NELSON. Correct.

Mr. WALLOP. I thank the Senator from Wisconsin.

Mr. NELSON. I thank the Senator from Wyoming. I yield back the remainder of my time.

Mr. CULVER. Mr. President, I suggest a vote.

Mr. MCCLURE. Mr. President, will the Senator yield me 1 minute?

Mr. WALLOP. I will be happy to.

Mr. MCCLURE. Mr. President, I was called from the floor for a moment. Do I understand that the Senator has now modified his amendment?

Mr. WALLOP. No, the amendment is taken as drafted, but the legislative history has made clear that the critical habitat that is referred to in the Senator's amendment is that which is designated by the appropriate agency in accordance with the Endangered Species Act as it now exists.

Mr. MCCLURE. Would this require an environmental impact statement only upon the designation of the critical habitat, in the event the matter is taken to the committee?

Mr. NELSON. That is correct. If in the course of a project an endangered species is discovered, and it involves a critical habitat, the question then would not be resolved until the agency comes before the committee. An environmental impact statement would be required before the committee could act on the question of an exemption. That is all.

Mr. MCCLURE. Madam President, it will be my intention to offer an amendment as a substitute for the amendment now pending.

Mr. WALLOP. Madam President, may I inquire as to the parliamentary situation if that was done?

The **PRESIDING OFFICER.** When all time on the amendment has been yielded back, the substitute amendment would be in order.

Mr. WALLOP. The problem is that the floor manager's impression is that the amendments have been accepted and all time has been yielded back—or does the Senator from Iowa have some time remaining?

Mr. CULVER. No, I have nothing further.

Mr. WALLOP. Then is it in order to offer the substitute before the ruling of the Chair?

The **PRESIDING OFFICER.** The amendment has not been adopted. When the time has been yielded back, then a substitute would be in order.

Mr. MCCLURE. Then, Madam President, if the sponsor of the amendment and the manager of the bill are prepared to yield back all remaining time on the Nelson amendment, I will offer my substitute at this time.

Mr. NELSON. I yield back the remainder of my time.

Mr. CULVER. I yield back the remainder of my time.

AMENDMENT NO. 1419

Mr. McClure. Madam President, I send to the desk a substitute amendment and ask that it be reported.

The Presiding Officer. The amendment will be stated.

The legislative clerk read as follows:

On page 13, line 23, insert the following——

The Senator from Idaho (Mr. McClure) proposes, as a substitute for the amendment of the Senator from Wisconsin (Mr. Nelson) an unprinted amendment which will be numbered 1419:

Mr. McClure. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The amendment is as follows:

On page 13, line 23, insert the following: The Endangered Species Act of 1973 is amended by adding the following new section:

CRITICAL HABITATS

Sec. 18(a). Notwithstanding any other provision of this Act or of any other law, an action taken by any Federal department or agency involving the designation of any area or areas as critical habitats of endangered or threatened species shall be deemed to be a major Federal action significantly affecting the quality of the human environment requiring the filing of an environmental impact statement under the National Environment Policy Act of 1969; *Provided that*, in the opinion of the Secretary of Interior, a satisfactory environmental impact statement under the National Environmental Policy Act of 1969 has not previously been conducted which will satisfy the intent of this section.

(b) Said environmental impact statement as established in subsection (a) of this section shall give equal consideration to all environmental, social and economic questions arising from the proposed designation of said critical habitat; and the Secretary of Interior shall be required to make all judgment resulting from said environmental impact statement taking into equal consideration all such environmental, social and economic questions.

(c) Until such time as said environmental impact statement is completed and utilized by the appropriate Federal department or agency in making said critical habitat designation no State or Federal department or agency (or judicial decision) can delay or deny on the basis of said critical habitat designation, any loan, grant, license, permit or other such action.

(d) The provisions of subsection (c) of this section will not apply if, at the discretion of the Secretary of Interior, he determines any such loan, grant, license, permit or other such action will result in irreversible damage to said critical habitat that may result in the extinction of any endangered or threatened species.

(e) Following any determination of the Secretary of Interior pursuant to subsection (c) of this section, the Endangered Species Committee as established in Section 7 of this Act will, within 90 days of the Secretary's decision, make a determination of whether any loan, grant, permit, license or any other such action will result in irreversible damage to said critical habitat that may result in the extinction of any endangered or threatened species. In making such determination, the Committee will review and take into consideration all available pertinent information, and, to the extent necessary, require additional information to be developed for their review and consideration before such determination is made.

Mr. Culver. Madam President, will the Senator yield for a question?

Mr. McClure. Has the reading of the amendment been dispensed with?

The Presiding Officer. The amendment is not properly drafted, and so it is not in order. It does not hit the same part of the bill as the Nelson amendment. Therefore, it does not qualify as a substitute.

Mr. McClure. Madam President, I have been advised that although both the Nelson amendment and my amendment deal with the question of establishing an environmental impact statement, that they are not necessarily in conflict with each other. I ask unanimous consent to withdraw my amendment at this time.

The PRESIDING OFFICER. The Senator does not have to withdraw his amendment. It is not in order.

The question is on agreeing to the amendment of the Senator from Wisconsin.

Mr. WALLOP. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WALLOP. I do not want the Senator from Idaho to lose his opportunity to bring up his amendment. I would like the parliamentary ruling that the two are not in conflict with each other and would not be considered as a second amendment to the same——

The PRESIDING OFFICER. The Chair does not interpret amendments. Procedurally, the amendment of the Senator from Idaho will be in order after disposition of the amendment of the Senator from Wisconsin.

Mr. MCCLURE. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment (No. 3129) was agreed to.

AMENDMENT NO. 3128

Mr. NELSON. Madam President, I call up my amendment No. 3128 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Wisconsin (Mr. NELSON), for himself, Mr. BROOKE, Mr. ABOUREZK, Mr. CRANSTON, and Mr. ANDERSON, proposes amendment numbered 3128.

Mr. NELSON. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 13, line 16, insert a new subsection (h) as follows:
>
> "(h) NOTICE.—The sixty-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (e) of this section granting an exemption from the requirements of subsection (a) of this section.".
>
> Reletter subsequent subsections as subsections (i) through (l), respectively.

Mr. NELSON. This is a simple amendment.

The opportunity for review of the decisions of the interagency committee to be established by the Culver-Baker bill could be rendered meaningless without a waiver of this 60-day notice requirement. This is because any exemption granted by the committee could be acted upon before the 60-day period elapsed. To avoid that possibility and to preserve an effective opportunity for review, this amendment would waive the 60-day notice requirement for review of final decisions of the committee granting exemptions from the act.

Mr. CULVER. Has the Senator finished?

Mr. NELSON. Yes.

Mr. CULVER. Madam President, I believe this is a very useful amendment to the pending bill. Section 11(g) of the Endangered Species Act authorizes citizens to bring civil suits to enjoin any person, including governmental officers or agencies, from violating the act. That provision, however, requires that citizens who intend to bring those suits, as the distinguished Senator from Wisconsin has stated, give 60 days notice. The purpose and the intent of this statutory requirement is, of course, to afford an opportunity for the alleged violator to make the appropriate corrections and hopefully avoid litigation.

As the Senator from Wisconsin properly points out, in that if the Endangered Species Committee established under this bill were to approve an exemption in a particular case, the opportunity for review of that decision would frankly be rendered quite meaningless if we were to continue this same requirement for a 60-day notice period. Of course, the time between their decision to exempt and the requirement for a 60-day notice before a lawsuit could be initiated would, of course, create a timeframe within which the species involved could be destroyed. It would deny the opportunity for court appeal and the opportunity for judicial review of the decision by the Committee on Endangered Species.

I thank the distinguished Senator from Wiconsin for this amendment. I think it does address and correct a protential problem in the bill, and it corresponds to the intent of the Environment and Public Works Committee at the time of our drafting.

Mr. MCCLURE. Will the gentleman yield?

Mr. CULVER. I yield.

Mr. MCCLURE. Is it the understanding of the Senator from Idaho that the amendment now offered applies only to a waiver of the 60-day notice with respect to the final determination of the committee?

Mr. CULVER. That is correct, and only in that particular case where an exemption had been granted under the provisions of S. 2899. It would not have any application in any other circumstance.

Mr. MCCLURE. It would only be in the granting of an exemption by the committee in which event they could go ahead with the action that might damage or cause some irrevocable or irreversible harm to a threatened or endangered specie, but it would not apply to the opposite action of the committee. If any court action were taken to review the alternative action of the committee in denying the exemption the 60-day stay would be in effect?

Mr. CULVER. That would certainly be my understanding, but I think for purposes of legislative history the author of the amendment should be afforded the opportunity to respond to the inquiry.

Mr. NELSON. Will the Senator restate his question?

Mr. MCCLURE. The committee can take one of two actions, or perhaps they could try more, they either grant an exemption or they deny an exemption. The only circumstance in which this amendment would apply is when they have granted the exemption, therefore opening the door to go forward with the action, and in no other circumstance would this exemption apply. If, for instance, the committee had refused to grant the exemption, the suspension of the 60-day notice would not be effective and the 60-day notice would be required, if the committee takes any action other than granting the exemption.

Mr. **Nelson**. In the case of a denial, the person who had challenged would be, I assume, challenging on the narrow ground that the committee had abused its authority.

Mr. **McClure**. And the 60-day notice requirement would be in effect in that event?

Mr. **Nelson**. No.

Mr. **McClure**. The only event in which it would not apply is when the committee has granted the exemption, but in no other circumstance would the 60-day notice requirement be waived under the Senator's amendment?

Mr. **Nelson**. That is correct.

Mr. **McClure**. I thank the Senator.

Mr. **Nelson**. May I make an inquiry of the Senator from Idaho.

Mr. **McClure**. Yes.

Mr. **Nelson**. Was it the desire of the Senator from Idaho to call up the amendment?

Mr. **McClure**. No.

Mr. **Culver**. May we have a vote on the amendment? I yield back my time.

Mr. **Nelson**. I yield back my time.

The **Presiding Officer**. The question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment was agreed to.

Mr. **Nelson**. Madam President, I suggest the absence of a quorum.

The **Presiding Officer**. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. **Nelson**. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The **Presiding Officer**. Without objection, it is so ordered.

AMENDMENT NO. 3126

Mr. **Nelson**. Madam President, I call up amendment No. 3126 and ask for its consideration.

The **Presiding Officer**. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Wisconsin, for himself and Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes amendment No. 3126:
>
> On page 1, line 4, strike everything after "1978". through "Secretary.". on page 14, line 22.

Mr. **Nelson**. Madam President, this amendment would strike everything in the bill except the extension of the authorization for the Endangered Species Act. I listened with interest this afternoon to the eloquent speech made by the distinguished Senator from Iowa in defense of the 1973 act. It struck me, as the Senator from Iowa spoke and when he had finished, that he had made the most compellingly eloquent defense of leaving the 1973 law as it is, without change, that I have heard from any source on or off the floor of the Senate.

I have been assuming all afternoon, after listening to that magnificent speech, that at some stage, the Senator from Iowa, who made the speech—and, I assume, also heard it—would be so persuaded by what he said that he would get up and withdraw his amendment to the Endangered Species Act. Perhaps the distinguished Senator from Iowa intends to do that at some later moment.

Mr. CULVER. Will the Senator yield?

Mr. NELSON. Yes.

Mr. CULVER. I just hope he is not holding his breath until that opportunity presents itself.

Mr. NELSON. No, I had not been holding my breath, but I had been waiting breathlessly. I do want to say that I have not before heard, in any forum, a more magnificent defense of this law. I have not heard any finer capsule outline of the history of the disappearance of the species, particularly the destruction and elimination of the species caused by the intrusions of the activities of mankind in the past 200 or 300 years, since the industrial revolution.

I just wanted to endorse what the Senator said and add to his speech just a few words in support of what really adds up to a compelling argument why the law ought to be left alone.

For almost 5 years since the Endangered Species Act was adopted unanimously in the U.S. Senate and with only four dissenting votes in the House, in that 5-year period, the law has worked very, very well indeed. I remember the debate. In fact, I remember the legislation enacted in the sixties as the first step toward the protection of endangered species. We began to take these steps based upon our growing alarm over the rapid extinction all over the world of various species that had been here for hundreds of thousands of years.

What is the record of that act and what exactly has happened to cause the Congress and the country to get into some kind of uproar over the threat to "progress" that some people have said this act now poses?

In 5 years, there have been 4,500 consultations over projects which might or might not have had some impact on some habitat of some endangered species. After those 4,500 consultations, some of which only involved a telephone call, some of which involved much more time than that, 260 cases were identified in that 5-year period in which the proposed action was believed to threaten the habitat of an endangered species. Therefore, some resolution of that conflict between the project and the habitat of the endangered species had to be worked out.

What was the result in this whole 5-year period of all these consultations? The result was that 259 of these projects in which the habitat of an endangered species was found were worked out, the projects modified, the habitat of the endangered species protected. With one exception, the Tellico Dam in Tennessee and the snail darter, I will comment on that case momentarily.

In that case, we were dealing with a dam, or, more broadly speaking, a recreational-industrial development project which was conceived almost 40 years ago, in 1939, at a different period in history, under different circumstances, under different laws, a project designed, conceived, proposed by the Tennessee Valley Authority which under the law does not have to go through the authorizations and benefit-cost discipline of all other water resource development projects.

In fact, none of the other agencies of the Federal Government have the authority to do what the Tennessee Valley Authority did with this project in Tennessee.

What is the project that is causing such a fuss?

Well, the project is one that should not have been started in the first place. The public interest would be better served if we left the land alone. Furthermore, I think it is pretty clear that the public interest would be better served if the project were never completed, apart from any consideration whatsoever of the Endangered Species Act and the snail darter. Apart from any consideration of the snail darter or the Endangered Species Act, the project, the public interest, would be better served, if it were not completed anyway, despite the fact that $22 million has been spent in the construction phase of the dam to create an impoundment of 14,000 acres.

Now, all kinds of people who have not looked at the project, in fact, almost everyone I have talked to about the project has been under the impression that somehow or other this was an important Tennessee Valley Authority project for the purpose of producing power and controlling floods.

There is hardly anything left, if one has ever flown over the Tennessee Valley, to dam any more. They have built all the dams they need.

No, this is not a flood control project, that is coincidental. It is not a power project, that is coincidental.

It is an industrial development, flat water, recreational, residential project. That is what it is.

The $120 million project is projected to have a value of less than $1 million a year in flood control and produce $3 million worth of power.

Now, juxtapose those two figures, less than $1 million worth of flood control value, $3 million worth of off peak power, against the agricultural loss.

As a consequence of the project, 38,000 acres of land condemned, 14,000 acres of prime agricultural land is going to be flooded. All in this impoundment.

What is the agricultural value in production and related businesses of retaining this agricultural land in production? The value is estimated to be between $38 million a year and $52 million a year in agricultural production and related activities of agribusiness. That, against less than $1 million in flood control and $3 million a year for power production.

We should not be taking 14,000 acres of prime agricultural land out of production at this stage in history. Why do we need to create some flat water recreation when there is an excess of it all around the project area.

So the fact of the matter is that we have a project that should not have been started, should not be completed, and now, as a consequence of the project being stopped, because it turns out that it involves an endangered species, everybody has joined in the stampede to modify a very good law.

Not a single episode in this 5-year period, not a single event, not a single problem, has occurred that justifies, that is a valid reason for changing the law.

Why do we not leave it alone?

As a matter of fact, Senator Culver's speech was eloquent testimony to the fact that there need be no change in the law. It works very well. Very few laws that I know of, or anybody else knows of, work that well.

Mr. CULVER. Will the Senator yield? I just have a question I just wondered——

Mr. NELSON. Just let me respond. I want to remind the Senator that I will be gracious to him, I attempted to get a question in this morning and I could not interrupt the Senator there in that eloquent speech. But I will yield for a question.

Mr. CULVER. As I recall this morning, the Senator from Iowa very graciously yielded upon the Senator's initial request.

Mr. NELSON. Well, the Senator did.

Mr. CULVER. I am seeking reciprocity this afternoon.

Mr. NELSON. The Senator did yield. Go ahead.

Mr. CULVER. The question I have for the Senator is: If this act has worked so wonderfully, for the last 4 years, if all conflicts have been resolved by consolidation, why does he fear the Culver-Baker amendment? Clearly, by his assessment of the situation, the committee will never have any work to do, and next year will come back to us and say, "We tried but couldn't even spend that money because there were no conflicts."

The fact is that we have actually strengthened the Endangered Species Act, actually strengthened it with this bill, by requiring good-faith consultation with this requirement it will even be less likely, as far as the Senator's assessment of the problem is concerned, that the committee will ever have any business at all.

Mr. CULVER. Is the Senator willing to wait to worry?

Mr. NELSON. Is this what the people of Iowa——

Mr. CULVER. Is the Senator willing to wait to worry?

Mr. NELSON. I worry about several things.

Mr. CULVER. Madam President, I oppose the amendment, and I would like to yield at this time to Senator Nelson.

Mr. NELSON. Madam President, if I understand the question the Senator from Iowa asked, the Senator from Wisconsin is worried about the amendment of the Senator from Iowa and the Senator from Tennessee.

The first thing I would be suspicious about would be the joint authorship. But we will skip that and move on.

I worry about it, because it punches a big hole in a very good law, and it permits a group of people who serve on a committee to make a decision to destroy the endangered species. Many of those people at one time or another, will have a project that comes before his committee.

What I say is that endangered species are so important, all species are so important, that our wisdom about making a decision as to which of them should survive or not is insufficient for me to trust a handful of people to make that decision for us. I think the law was very good and well thought out and very carefully designed to be sure that a handful of people could not get together and say, "We have the knowledge and we have the wisdom and we have the judgment to decide whether or not that species shall survive."

Since this 1973 law was designed to say, "You either modify the project to accommodate the habitat of the endangered species or there is no project," it is a very powerful level which caused every case to be resolved, except the snail darter, which is a sport that is unlikely to occur again under any circumstance, in any event.

I wonder whether the Senator will yield me some time in order to finish my remarks? That would save me calling up another amendment. Or does the Senator intend to reserve the time?

Mr. Culver. I would like to reserve the time. All I have is 15 minutes in opposition, under the previous time agreement. I suppose I have less than that now.

The Presiding Officer (Mr. Metzenbaum). The Senator has 11 minutes remaining.

Mr. Nelson. I would not want to ask unanimous consent. I will call up another amendment, for the purpose of being able to repeat my remarks and to put material into the record.

AMENDMENT NO. 1420

Mr. Culver. Mr. President, I send a substitute amendment to the desk at this time and ask for its immediate consideration. We could divide that time.

Mr. Nelson. Would the Senator permit me then to conclude my remarks, which will not take very long?

Mr. Culver. All right. I would be delighted.

The Presiding Officer. Is the Senator from Iowa asking unanimous consent, in view of the fact that this amendment would not be in order while the first amendment is still being considered?

Mr. Culver. Yes, I make such request.

The Presiding Officer. Without ojection, it is so ordered.

Mr. Culver. Mr. President, we have 10 minutes remaining on the original Nelson amendment?

The Presiding Officer. Nine minutes remain on the original Nelson amendment.

Mr. Culver. Can the Senator finish in that time?

Mr. Nelson. I think so.

Mr. Culver. I yield to the distinguished Senator from Wisconsin time on the original Nelson amendment, such time as he may need.

The Presiding Officer. The clerk will report the amendment.

The assistant legislative clerk read as follows:

> The Senator from Iowa (Mr. Culver) proposes an unprinted amendment numbered 1420 to amendment No. 3126:
>
> On page 6, line 6, strike the word "procure" and insert in lieu thereof "obtain".

Mr. Nelson. Mr. President, I was remarking that this law has worked very well, and no case has been made on the floor or off the floor that presents a valid rationale for changing the law. It may very well be, and I suspect that it is likely, that some of the proponents of this proposal are supporting this approach because of their perception of what the political reality is. They believe that unless some accommodation is made in the law, the forces who are making a powerful thrust for change will come up with amendments that are much more serious than the one designed by the Senator from Iowa and the Senator from Tennessee.

I will say—I think it is correct—that if it is politically necessary to modify the law, then I think that the distinguished authors of the pending measure have done a pretty good job of designing a modification.

However, my argument at this time is that there is no justification for modifying the law. The panic being expressed in Congress and elsewhere in the country by industrial developers, politicians, and others about the great threat to progress that the Endangered Species Act presents is a smoke screen. It does not have substance. It is, in fact, not founded on any basis of fact at all, because the act has worked very well. The Tellico Dam is not a valid case to use.

So what are we really left with when we stop to consider it?

Mr. Baker. Mr. President, will the Senator yield for a moment?

Mr. Nelson. I yield.

Mr. Baker. Mr. President, I have listened with great interest as the distinguished Senator from Wisconsin spoke of the political realities concerning the Endangered Species Act and suggested that the authors of the amendment before the Senate today, Senator Culver and I, may have proposed this amendment in response to these political realities, I suspect that, in a manner of speaking, he is right; but I also suspect that it is a different type of political reality from what he had in mind.

I am absolutely convinced that after the decision of the Supreme Court in the Tellico case, if we did not build more common sense into the Endangered Species Act, if we did not create some flexibility, if we did not create some way to relieve the tensions created by situations like Tellico, if we did not affect the realism that the law requires in the long term, the Endangered Species Act would expire; that there would be so much opposition to it that the act would be in jeopardy.

The political realities, as I think of them, are that, in the sense that we are formulating public policy, politically it is in the best interests of this country to continue to have legislation like the Endangered Species Act on the books. But if such legislation is to survive and endure, it has to be realistic.

In my view, experience has shown us so far that the present Endangered Species Act is not realistic and that the amendment proposed by the committee is not only necessary but also essential if the program is to continue.

I thank the Senator for yielding.

Mr. Nelson. Mr. President, I think the distinguished Senator from Tennessee said approximately what my guess was as to the reason for the proposal, except that I would not agree with the observation of the Senator that this law is not practical.

The argument I am making here is that all the emotional upset around the country over the Endangered Species Act because of Tellico and the snail darter is not justified by the facts. That is the argument I am making here.

Mr. Baker. Mr. President, if the Senator will yield for another moment, I disagree most respectfully with that. I think there is no panic, no emotion. Those of us who have seen this confrontation develop over the years I think have been very patient. We have seen the litigation commence in the U.S. District Court and seen that court rule in favor of the completion of the dam, to see two appeals taken and now the final culmination of the Supreme Court's decision on this matter just a few days ago. We are sitting down there in Tennessee watching as a Federal agency, the TVA, has completed or virtually completed a $116 million dam that they cannot close or use.

I think the people of Tennessee and the Tennessee Valley region have been very unemotional about it. I think they have responded with remarkable restraint. I think if I were to cater to the emotions of my constitutents or if I were to speak in political tones, meaning political get-reelected terms. that what you do is simply exempt that dam, and there may be a movement to do that, maybe some people would be more pleased if we did that, if we just exempted the Tellico Dam. But I do not believe exemption for particular projects is a ligitimate function of Congress.

I think the act should be adjusted to take care of those situations where the act clearly did not work, and do so carefully, dispassionately, and without emotion.

I believe the people of this country and of my region have been remarkably restrained in that respect, but I am not sure how much longer they will be if we do not bring them legislative relief in the form of the amendment proposed by the distinguished Senator from Iowa.

Mr. CULVER. Mr. President, will the Senator yield at this point as long as he is on my time?

Mr. NELSON. I yield to the Senator from Iowa.

Mr. CULVER. Have both Senators finished? I wonder if the Senator has had a chance to finish?

Mr. NELSON. I have not had a chance to say anything yet based on the 9 minutes the Senator so graciously yielded to me. We will be moving to a substitute, and I will be glad to yield to the Senator right now and maybe I can finish.

Mr. CULVER. Go ahead, finish.

Mr. NELSON. I wanted to complete my thought. I have read the RECORD, read the speeches, and read news stories. Furthermore I have received some emotional letters as a matter of fact, from people about the snail darter and how useless it is. My point remains, and I repeat what it has been from the beginning that the law has worked very well. The Tellico Dam case is not a very good case because there is a very good argument that the dam should not have been started in the first place. Now that it is started, it should not be completed.

It is like one project in my State, by the way, in which there is also a great deal of emotion, the La Farge Dam. This Corps project should not have been started . It is two-thirds completed, and in my judgment it should not be completed either.

Mr. BAKER. Mr. President, will the Senator yield just for a second?

Mr. NELSON. I yield.

Mr. BAKER. I only point out that I do now know whether the dam should have been started or not, but it was started before I came to Congress almost 12 years ago and long before the Endangered Species Act was ever enacted. Maybe it was a mistake to build Tellico Dam. I do not know. But you cannot go back and undo that decision and you cannot carry off that $116 million worth of concrete.

My point is you ought to go ahead, finish it, and make the law conform to it.

The PRESIDING OFFICER. The time of the Senator from Wisconsin has expired.

Mr. NELSON. Mr. President, let me ask the Senator. Maybe I can finish in 3 minutes. I ask the Senator from Iowa is he going to move to the substitute amendment? Then I will just take 3 minutes of that. Is that satisfactory?

Mr. Culver. All right.

Mr. Nelson. Mr. President, a parliamentary inquiry.

The Presiding Officer. The Senator will state it.

Mr. Nelson. Are we now then on the substitute amendment, all time having been yielded back?

The Presiding Officer. The Chair wishes to clarify that we are now on the amendment of the Senator from Iowa which is an amendment to perfect the text of the proposed amendment which is to be stricken by the amendment of the Senator from Wisconsin.

Mr. Nelson. Do I understand the Chair to be saying this is a perfecting amendment to the amendment offered by the Senator from Wisconsin?

The Presiding Officer. It is a perfecting amendment to the language which the Senator from Wisconsin proposes to strike from the original text.

Mr. Nelson. And that is the amendment which is the pending business?

The Presiding Officer. The Senator is correct.

Mr. Nelson. And there are 15 minutes to a side on that amendment?

The Presiding Officer. The Senator is correct.

Mr. Nelson. Mr. President, I wish to conclude with one point—the act should not be changed. No evidence has been produced to justify a change. I simply wish to point out that, when you think about it, what we are really left with are those who think we have to modify the Endangered Species Act because some project may be affected in their area at some time in the future. What we are really left with is the position of those whose basic argument gets down to this: Someday, sometime in the vague misty future some unplanned, some unknown project not yet conceived by anyone, not yet proposed, may be stopped someday in that distant future in order to protect some unnamed species of unknown value. That is really about what the argument comes down to.

As to one final point, the committee report, the proponents of the amendment make the argument that there are on the horizon projects that are threatened by the Endangered Species Act, important economic projects for the benefit of the country which will be stopped by the act unless it is modified.

The Presiding Officer. The Senator's 3 minutes have expired.

Mr. Nelson. I thought there were 15 minutes to each side on this amendment.

Mr. Culver. I thought the Senator wanted 3 minutes at this point.

The Presiding Officer. The Senator is correct. There are 15 minutes on each side.

Mr. Nelson. The amendment is 30 minutes, with 15 minutes to each side.

Mr. Culver. If I could say to the Senator, we have a problem, because I have tried to generously give the Senator time on his original amendment and now we are into the substitute amendment and we do have other Members who want to speak to some of the very important points that the Senator raised.

We are going to have difficulty unless we go ahead and submit another substitute amendment or in some other way get the time necessary to address the general points that the Senator raises. I think we do wish to respond.

Mr. NELSON. The Senator from Wisconsin is speaking on his 15 minutes, and I will use it.

Let me point out to the Senator from Iowa that this unanimous-consent agreement was made on the floor with no notice to me. I very graciously said to the Senator I will not come to the floor and insist upon a request.

Mr. CULVER. Said to which Senator?

Mr. NELSON. I said to the Senator from Iowa and the Senator from West Virginia, standing there, and as an accommodation I said: "All right. I will not ask for the hour and 30 minutes that was given to the Senator from Mississippi on his main amendment." I said, "We will just call it up and try to get my statements in. If necessary, I will offer an amendment, speak to it, and withdraw it."

And I have not violated that agreement, and the Senator from Wisconsin is now speaking on that one part of the 15 minutes of the amendment the Senator offered. If the Senator wants me to offer an amendment, I will offer one right now and finish my remarks.

Mr. CULVER. Let me just say that the Senator is, of course, correct, when he says he originally was not privy to the unanimous-consent agreement entered into by the majority leader and minority leader and other members of the committee.

There was provision for, in the case of the amendment of the Senator from Mississippi, an hour and a half. When the Senator subsequently came to us it is true we said if he made that request it was our understanding that objection would be heard to changing the unanimous-consent request to give the Senator another hour and a half, because there were other Senators with similar desires to offer amendments who would make similar requests.

It is true the Senator can offer this approach to just send in a series of amendments to get the necessary time. In fact I offered one in effect, to help the Senator.

Mr. NELSON. Just what is the Senator's complaint? I am puzzled.

Mr. CULVER. I wonder what the Senator's complaint is. I asked if I could speak now on the points that the Senator has made, and apparently he feels it is inconvenient to permit that now. So I would suggest that it is true the Senator has 15 minutes. The Senator asked me before could he have 3 minutes of that time now, because technically it is my amendment pending.

Mr. NELSON. I did not ask for 3 minutes of that time. The Senator or the Chair misunderstood me. My point is, what is the Senator's complaint? I am trying to complete my remarks.

The Senator has three times interrupted. I have allowed the interruptions. The Senator from Tennesse did the same, and I allowed the interruption. Now I intend to finish my remarks. I did not notice the Senator from Iowa having interruptions in his long, long presentation today. So I would expect the same courtesy out of him and, in any event, I am going to finish my remarks.

Mr. CULVER. The Senator from Iowa's presentation, I think if you put a clock on it, is not quite, even at this stage, equal to the time the Senator from Wisconsin has already utilized.

Mr. NELSON. All right. Then make it up later this evening. But in any event I am going to finish my remarks, and I will not submit to any interruption.

The **Presiding Officer**. The Chair wishes to point out that there is pending the amendment of the Senator from Iowa. Under the rules the Senator from Iowa is entitled to have 15 minutes. The unanimous-consent agreement provides that in the event the manager of the bill is in favor of any such amendment or motion the time in opposition thereto shall be controlled by the minority leader or his designee.

Under the circumstances, the proponent of the amendment, the Senator from Iowa, has control of 15 minutes and the minority leader or his designee has control of the adversary 15 minutes.

Mr. **Baker**. Under those circumstances I previously designated the distinguished Senator from Wyoming to stand in my place and stead in control of the time under the order.

Mr. **Culver**. Mr. President, I will give the distinguished Senator from Wisconsin what time he needs of my 15 minutes to complete his statement. If necessary, we can just submit another substitute amendment at a later time and extend the time.

Mr. **Nelson**. I thank the Senator from Iowa.

Now, let us complete one more point. the argument has been made in the committee report and by the Senator from Iowa, using the committee report, that on the horizon is a substantial number of cases that are going to create problems. These "substantial number of cases" actually are 12 actions.

I wish to put in the Record two letters from the Department of Interior, Assistant Secretary for Fish and Wildlife and Parks, Mr. Bob Herbst. One letter is addressed to me, dated July 12, 1978. The other letter is dated July 14, 1978 and is addressed to the Senator from Iowa.

Now if you look at pages 2–3 of the committee report the argument is made that there is this "substantial number of actions on the horizon that are going to be stopped by the Endangered Species Act.

What does Mr. Herbst say about that? Well, Mr. Herbst says, and I quote in part from the letter addressed to me:

> We are confident and hopeful that no major controversy will develop with the other projects either so long as the consultation is conducted by open-minded people with an honest desire to accomplish the concerned project, while minimizing adverse effects on the critical habitats of endangered or threatened species.

In the letter to Senator Culver, he says basically the same thing. He says:

> We cannot say that one or more of the remaining nine projects on which consultation has not taken place will not result in an impasse or a conflict. That possibility always exists.

Well, a possibility always exists for almost anything. But the fact of the matter is that the Committee report, relying upon some statement of some 12 projects that may be held up, is pretty compellingly refuted by the letter from the Assistant Secretary of Interior for Fish and Wildlife and Parks.

Of those 12 "irresolvable" projects, 3 have already been resolved. That brings it to nine. In the next week or so, another one will be resolved, and that brings it to eight. Interior believes and both Herbst letters strongly reflect the belief that all these eight will be resolved.

So I suspect that within the very near future all of the cases relied upon cited by the Committee will dissolve into thin air and we will be back where we started. In the meantime we will have amended a good law and put in a gaping loophole in the current Endangered Species Act that is totally unnecessary.

If someday, sometime in the future, there were some project that nobody has yet thought about, that is so important to the economy of the Nation that it would be necessary to make some decision that might sacrifice an endangered species, why do we not wait until that occasion arrives? It is not here yet. It is the worst scenario scene that people can design. It is a scare story that has not happened and is unlikely to happen. Who is to say that the Tellico Dam, for example, is more important than any endangered species?

I ask unanimous consent to insert in the Record a letter from the Acting Secretary of the Interior, Mr. Joseph, who is against any change in the law; two letters from Mr. Herbst, one addressed to myself and one addressed to Senator Culver from Iowa.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 12, 1978.

Hon. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: This is to provide you with the views of this Department on legislation pending in the Senate to amend the Endangered Species Act of 1973.

Section 7 of the Act has been the recent subject of considerable publicity and misunderstanding and is the primary target for amendment. As you know, this section prohibits Federal agencies from authorizing, funding, or carrying out any action that may jeopardize the continued existence of endangered or threatened species or destroy or modify their critical habitats. S. 2899, scheduled to be considered by the Senate in the near future, would establish a 7-member committee to rule on exempting Federal agencies from compliance with section 7 when an "irresolvable conflict" exists. An amendment to S. 2899 to be submitted by Senators Stennis, Eastland and Garn would exempt projects underway on the date of enactment of the Act in 1973 and those projects which are half completed when a species is listed, and would modify the statutory responsibility of Federal agencies under the Act.

This Administration is firmly committed to implementation of the Endangered Species Act and is opposed to any substantive changes to section 7. Man's activities threaten a growing number of species with extinction. However, many endangerments and extinctions can be prevented by the protection of a relatively small area or by the careful development of land and water use projects. I believe that the section 7 consultation process has proved that there are resource development alternatives which will allow resource utilization and yet insure abundant natural diversity.

The implementation of section 7 is not having the profound adverse impact on Federal action that many believe. The Fish and Wildlife Service has carried out over 5,000 consultations under this section. In over 4 years only three cases have reached the courts, and only one of these has resulted in what some consider an impasse. Even in this case—the Tellico Dam and Reservoir project—consultations have resumed and I believe the conflict can be resolved in a mutually satisfactory way. I should be noted that all of these projects were initiated before complete environmental planning was required by the National Environmental Policy Act. At the present time, an Environmental Impact Statement prepared before a project is initiated will identify potential endangered species and other similar problems.

Obviously, the existing administrative processes are adequate in assisting Federal agencies to carry out their actions in ways which are consistent with the needs of listed species and they should be given an opportunity to increase in effectiveness as the system becomes better understood. It is significant that Federal development agencies are, to an increasing extent, seeking compliance with the Act at early stages of project formulation and development when options are easiest to address. President Carter has directed a survey of all Federal lands to identify habitat critical for listed species to avoid the possibility that such habitats will be identified too late to affect project planning. The Endangered Species Act is still in its infancy and we expect to see many of the problems encountered thus far dissipate as compliance becomes an integral part of Federal natural resource development planning.

To amend section 7 at this point would be premature and would certainly undermine the consultation process. Development agencies would be reluctant to enter into meaningful consultation if there is any possibility of an exemption. Sponsors of projects which have suitable alternatives to minimize or eliminate adverse impacts would be reluctant to implement even minor modifications.

S. 2899 would also provide an exemption from the prohibitions on possession and trade in section 9 of the Endangered Species Act for endangered or threatened raptors legally held in captivity or a controlled environment on the date of enactment of the Act of the "domestic captive produced progency" of such raptors. This Department recognizes that strict application of these restrictions at time creates obstacles to effective propagation, exchange and other activities involving captive wildlife, a result contrary to the spirit of the Act. In response to this, the Fish and Wildlife Service published a notice in the Federal Register of April 14, 1978, to treat captive populations as separate "species" from wild populations. This would provide for the listing of certain otherwise endangered species as threatened, and allow for possession, transfer, exchange and commerce in these animals. Therefore, exemptions for individual groups of animals, in this case raptors, is neither necessary nor appropriate to resolve alleged hardships.

This Administration firmly believes that the Endangered Species Act provides a sound, rational and flexible approach to resource management which should not be jeopardized because of unjustified overreaction. The Act has been given a hard test and it is working well.

Sincerely yours,

JAMES A. JOSEPH,
Acting Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 12, 1978.

HON. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: Earlier this year a list of 12 Federal projects (attached) that may pose "potential consultation problems" was prepared for the Senate Subcommittee on he Environment at the request of key subcommittee aides. It was not intended then nor is it accurate now to state that these potential consultation problems represent insurmountable obstacles that will result in "Tellico-like" situations after the consultations are completed. In fact, consultations have now been completed on three of these projects (Miami Jetport—Florida, Dickey Lincoln—Maine, and Osceola phosphate mining—Florida) and no jeopardy to the concerned endangered species was found providing reasonable precautions are taken as outlined in the Biological Opinions concerned.

We are confident and hopeful that no major controversy will develop with the other projects either so long as the consultation is conducted by open-minded people with an honest desire to accomplish the concerned project, while minimizing adverse effects on the critical habitats of endangered or threatened species. We can assure the U.S. Congress that the Department of the Interior will always approach the consultation table with this point of view.

Sincerely yours,

BOB HERBST,
Assistant Secretary for
Fish and Wildlife and Parks.

JULY 14, 1978.

HON. JOHN C. CULVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CULVER: At your request, this letter has been prepared to further clarify my letter to Senator Nelson dated July 12, 1978 (copy attached). Our letter was prepared to answer questions that he had about the list of 12 Federal projects that might pose potential consultation problems. My letter to Senator Nelson does not repudiate the list of 12 projects submitted to your subcommittee earlier this year at the request of key subcommittee aides. My letter simply states what that list of Federal projects was intended to convey to your subcommittee, inasmuch as there is apparent confusion on this issue.

We cannot say that one or more of the remaining nine projects on which consultation has not taken place will not result in an impasse or a conflict. That possibility always exists. We can say and we do sincerely believe that no major controversy will develop with the nine remaining projects so long as the consultation is conducted in good faith by both parties and so long as an honest attempt is made on both sides of the consultation table to permit Federal projects that Congress has approved to be developed while doing what is necessary to protect endangered and threatened species and their critical habitats.

Our list of projects that might pose problems is based upon our ability to anticipate these kinds of problems. Our experience to date reveals that the problems that often are most vexing are those that cannot be anticipated readily. We have dealt with these effectively in the past, but it is obvious that the potential for greater complexity and a resultant increased difficulty in resolving problems is real and growing.

We remain confident that good-faith consultation is the key to the successful resolution of conflicts between projects or programs and the Endangered Species Act. Let me make it clear that I would hope and expect that most consultations will lead to a resolution satisfactory to the needs of both the species and the project. However, this is not to say that impasses will not occur.

I am pleased to reiterate that this Department will do its utmost to carry out its responsibilities under the Act and that we will always approach the resolution of conflicts in good faith.

Sincerely yours,

ROBERT I. HERBST,
Assistant Secretary for Fish and Wildlife and Parks.

Mr. WEICKER. Mr. President, will the Senator from Wisconsin yield?

Mr. NELSON. I yield the floor.

Mr. WEICKER. I just rise, Mr. President, to support the position of the Senator from Wisconsin.

Mr. President, in 1973, the Senate decisively endorsed the Endangered Species Act with the intent to mitigate man's effect on the destruction of life. We wisely recognized the importance of all creatures of the Earth and how much we have yet to learn of their potential worth. Notwithstanding the esthetic and spiritual values of such animals as the giant blue whale, and the practical medicinal benefits of minute plants, all life is part of an intricate, interdependent web. No single species, therefore, is unimportant.

The Endangered Species Act has served its purpose well. With the sole exception of TVA, Federal agencies testified before Congress that they have been able to accommodate the survival of an endangered species with the intent and purpose of their public works projects. Hundreds of conflicts have been resolved due to good faith interagency cooperation. Implementation of the act proves that man and animal can successfully live together, as they should.

I am afraid, however, that the success of this act and the logic that led to its passage will be severely undermined by the existence of a Federal project whose potential benefits should have been questioned from the start. The Tellico Dam and the seemingly innocuous snail darter are the focus of a new controversy over the alleged inflexibility of the Endangered Species Act. Understandably the idea of a 3-inch fish halting a multimillion dollar dam seems comical at face value.

Mind you, I must admit I have no special reverence for the snail darter. But, at the same time, I have no love for the Tellico Dam. In the past, TVA officials failed to reassess the value of a project that was first conceived in 1939, but not begun until 1967. Responsible persons, including the present chairman of the Tennessee Valley Authority, question the benefits of the plan if it is allowed to go full term. Closing the gates of the Tellico Dam will not only destroy the last habitat of the snail darter, but also 17,000 acres of high quality farmland, the last free-flowing section of the Little Tennessee River, and numerous historical and archaeological sites, including the ancestral home of the Cherokee Indian. All this would be accomplished in exchange for a 0.0005 percent increase in TVA's energy output.

Yet, because of this one questionable undertaking, we are now ready to consider a bill, S. 2899, which will give the U.S. Government the authority to condemn a species to extinction. The Culver-Baker proposal allows a seven-person committee to provide an exemption for a project if its benefits outweigh the benefits of conserving a species. What are the criteria? Is the species edible? Does it provide for other species? Is it pretty to look at? I believe we simply do not know enough about life and its interactions necessary to maintain the health of our planet to make such decisions.

Certainly, the effect of the proposal would not be detrimental if Federal agencies truly dedicated themselves to resolving a conflict with an endangered species as they have done over the past 5 years. But there is a danger that those same agencies will now have the license to push ahead with their programs and defer the problem to the committee.

Hence, the committee will be faced with the cut and dry decision to either save a project or a species. I contend that the success of the act in the past has clearly shown that the United States Government does not have to play God and make such life and death decisions.

Therefore, I urge my colleagues to support the Nelson amendment to S. 2899. Let us not let the fate of the Tellico Dam excite us into changing a law that works.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. WALLOP. Mr. President, if I understand it correctly, we have 15 minutes?

The PRESIDING OFFICER. The Senator from Wyoming is correct.

Mr. CULVER. Mr. President, I wish to say——

The PRESIDING OFFICER. The Chair understands the Senator from Iowa has the entire 15 minutes.

Mr. CULVER. Yes.

I wish to say at the outset how very much I respect the sincerity and the integrity of the statements of the distinguished Senator from Wisconsin. If there is to be a Member of this Senate who is to be cited for leadership in the area of environment throughout the terms of his service in this Chamber, it would have to be the distinguished Senator from Wisconsin and one or two others of similar stature, and commitment and concern.

Mr. President, there have been a number of statements made here with the implication that the action that the committee is recommending to the Senate is somehow being prompted and triggered in the form of a panic reaction to a problem that really and truly does not yet exist.

Mr. President, if there is a problem with regard to the legislative process, given the nature of our current public policy problems, it is our inability to anticipate problems and to get out and position ourselves responsibly and rationally in a way that, when the political pressures come, we will not do a short-sighted thing.

Mr. President, this committee began oversight hearings on this bill a year ago. We heard from the Fish and Wildlife Service. We heard from the General Accounting Office. We heard from conservation and environmental interests and development interests as to the successes and as to the problems with this legislation.

It has been said that we have some 4,500 cases, and only 3 proved to be irreconcilable; one of those is the celebrated Tellico Dam case. It has been suggested that that is a case that never should have been brought, and that, in fact, the public works project should never have been built in the first place.

In all candor, the committee was not responding to that issue at the time of our initial consideration and concern. Rather, we were responding to the fact that this bill had never had oversight hearings since its enactment in 1973.

What were we told on the occasion of those hearings by the Fish and Wildlife Service? What were we told on the occasion of those hearings by the General Accounting Office, which right now is in the process, after a year, of a very thorough examination of the implementation of this act?

We were told several things. We were told, as is true, that they had an incredibly large number of cases that were unresolved, but they also said to us, "It now looks like we have some 12 cases that" in their words "are likely to present irreconcilable conflicts in the short term, in the immediate months ahead."

The Senator has mentioned that 3 of those 12 have been somewhat successfully resolved. One of them I am sure he has in mind is Dickey Lincoln. As recently as this afternoon, we do not have assurances that that, in fact, is the case.

What we did hear from GAO was this: They said that the inflexibility of this act was having the consequence, in the administration of the act, of the Fish and Wildlife Service not withholding species from the endangered species list, for political reasons—that it was so rigid and so inflexible that, when push came to shove politically, the agency itself was intimidated by the political question. So they would negotiate, and decide if the heat was too bad, and then decide, "If so, we will not even put that species on the endangered species list."

Certainly the character and integrity of the act is not furthered under those circumstances. Quite the contrary.

We also heard from GAO that the scarcity of Fish and Wildlife Service records precluded them from even accurately estimating the number of consultations. Out of that number of 4,500 the Senator is talking about being bandied around, apparently all but 200 of them were phone calls. They were not substantive consultations.

Second, we heard from them that the Interior Department has attempted to down play evidence of present or future conflicts. This is information from the GAO.

They have been playing games, according to GAO, with the designation of critical habitats, because of the inflexibility of the act. They have also, according to the GAO, been involved in making political judgments even with regard to the presentation of biological opinions, because of the inflexibility of the act.

Mr. President, anyone who is committed, as I am, to the fundamental purposes, the objectives, and the goals of this legislation can fairly be accused of panicking or being interested in gutting this act. What is a cheaper vote than to stand here in the Senate Chamber and say "Nothing needs to be done?" I do not have any projects to answer for. I do not have any projects in my State, yet.

What we are trying to do is get out ahead of that problem, because we see now, when we are talking about the increase in the number of listings on the endangered and threatened species list, that there are 1,800 plants going on that list in the near future—1,800 more. There has been a 450-percent increase, over the total for the previous 4 years, in the number of species that are going on the list.

We also know that the Fish and Wildlife Service says that next year they are going to have 20,000 consultations, as opposed to 4,500 in the last 4 years. You do not have to be Jimmy the Greek to know that that spells trouble politically.

We already have trouble. If we do not move responsibly—and there is no political constituency for commonsense; there is no political constituency for standing in the middle of the crossfire and getting it from the right and getting it from the left—but I will tell you what we are going to get if we do not have the wisdom to adopt this amendment today. There is no question about what we are going to get here, what they are going to get in the House, what we are going to get in both places. That is an amendment that will come, not in the form of a responsible, balanced committee that we have carefully constructed. It will not come in the form of a strengthening of the consultative process where, under the provisions of our bill, we actually strengthen the assurances that there will be good faith efforts to cooperate. We are saying that when you designate an endangered species, you have to quit pouring the concrete at that very moment. We do not have that leverage under the current law. That was the problem with the old law: they said "endangered species," and started working overtime, to go from 30 percent completed up to $100 million, so no one could come in and say this 3-inch snail darter could stop that $117 million project.

We say further you cannot even get your foot in the door of this committee unless the Fish and Wildlife Service itself specifies that you have tried in good faith to work out an acceptable agreement to preserve the species.

Mr. President, if these cases come up—and they just passed a billion dollar public works program by unanimous consent in the House about 2 weeks ago—I will say to the Senate I do not want to be sitting as judge and jury in the future. Week after week, month after month, these projects will come in where we are supposed to decide the merits of these disputes, where we are supposed to decide which endangered species should be weighed and balanced in the national interest. I will tell you how they will be resolved: they will be resolved, in each and every case, with an effort to have an ad hoc singular exemption. And they will get those exemptions more often than not because of the politics and economics of the political process.

Or they will come in and say, "I have a better idea: let us let the Governor decide." We had one amendment of that kind. Or "let the agency decide," or "let the President decide," or "let some other forum decide."

Mr. President, I will take my chances with this bill, which I think is carefully drafted. Mr. Lynn Greenwalt, the Director of the U.S. Fish and Wildlife Service, testified that he thought this proposal provided—I quote the testimony of the Director of the Fish and Wildlife Service at our hearings:

> This proposal provided a practical mechanism for resolving otherwise irresolvable confrontations so long as the consultation process remains strong.

He also said that the committee's decisions, "would likely be good ones because the members have full understanding of the implications of their actions."

So, Mr. President, it seems to me that the Senate should approve the bill, which was unanimously approved by the Committee on Environment and Public Works after the most careful consideration on a bipartisan basis, in recognition of the need to provide a mechanism to introduce some flexibility, some flexibility so that we do not have the Fish and Wildlife Service playing games because of their own political fear about the consequences of doing their job under this law that currently has no flexibility. At the same time it would provide an opportunity to examine a case on its merits. This would be done by a carefully crafted group of individuals best equipped to bring informed, detached, objective judgment that is knowledgeable and relatively insulated from the political pressures and the whims of the moment and the day.

Finally we are saying, "In those cases where you exempt, those very rare cases where we are calling upon you to play God the second time around, you can do it only if you satisfy yourselves that the consultation process has been totally exhausted; you can only do it when you satisfy yourselves that these explicit criteria of national interest are met, and you can only do it if five out of seven of the members vote to exempt a project."

Mr. President, finally I would speak to someone who is really interested in the preservation and the integrity of this act and not just the issue—not just the issue of his act. We have had a number of environmental groups privately come in and whisper and wink and nod that this is what they want, "We think this will be very helpful," but they know if they are going to get their dues every year they have to keep demagoging to their constituency. Well, I do not care how the votes fall on this one, but I say one thing, I hope they get the message. I am sick and tired of that kind of politics . I am sick and tired of it. I would like them, if they are worthy of representing these outstanding groups, to have the integrity to tell them the same thing they tell me. Unless and until they do I am not interested in what they tell me, very much.

Mr. President, finally, let me just say that we do have some letters that have come in today from the National Audubon Society, for one, praising the statesmanship of this committee. That is one group that has put their money where their mouth is. They put their mouths where their constituency's money is. They have been honest and responsive, and they follow the political climate. I think they know what is in their best interests.

How long do they think we should walk the plank? How long should we have people who can possibly survive trying to do the right thing, if they know we are doing the right thing, and they speak out against us?

I am reminded of a quote by John Dewey while listening to the presentation of the Senator from Wisconsin. He said, "A man who prides himself upon acting upon principle is likely to be a man who insists on having his own way without learning from experience what is the better way."

It seems to me, Mr. President, that that is really the choice before the Congress this afternoon and for the Senate today.

Mr. President, I ask unanimous consent that the two letters referred to in the colloquy between the Senator from Wisconsin and myself from the Fish and Wildlife Service be printed at this point in the Record.

There being no objection, the letters were ordered to be printed in the Record, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C.

Hon. GAYLORD NELSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR NELSON: Earlier this year a list of 12 Federal projects (attached) that may pose "potential consultation problems" was prepared for the Senate Subcommittee on the Environment at the request of key subcommittee aides. It was not intended then nor is it accurate now to state that these potential consultation problems represent insurmountable obstacles that will result in "Tellico-like" situations after the consultations are completed. In fact, consultations have now been completed on three of these projects (Miami Jetport—Florida, Dickey Lincoln—Maine, and Osceola phosphate mining—Florida) and no jeopardy to the concerned endangered species was found providing reasonable precautions are taken as outlined in the Biological Opinions concerned.

We are confident and hopeful that no major controversy will develop with the other projects either so long as the consultation is conducted by open-minded people with an honest desire to accomplish the concerned project, while minimizing adverse effects on the critical habitats of endangered or threatened species. We can assure the U.S. Congress that the Department of the Interior will always approach the consultation table with this point of view.

Sincerely yours,

BOB HERBST,
Assistant Secretary for Fish and Wildlife and Parks.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 14, 1978.

Hon. JOHN C. CULVER,
U.S. Senate, Washington, D.C.

DEAR SENATOR CULVER: At your request, this letter has been prepared to further clarify my letter to Senator Nelson dated July 12, 1978 (copy attached). Our letter was prepared to answer questions that he had about the list of 12 Federal projects that might pose potential consultation problems. My letter to Senator Nelson does not repudiate the list of 12 projects submitted to your subcommittee earlier this year at the request of key subcommittee aides. My letter simply states what that list of Federal projects was intended to convey to your subcommittee, inasmuch as there is apparent confusion on this issue.

We cannot say that one or more of the remaining nine projects on which consultation has not taken place will not result in an impasse or a conflict. That possibility always exists. We can say and we do sincerely believe that no major controversy will develop with the nine remaining projects so long as the consultation is conducted in good faith by both parties and so long as an honest attempt is made on both sides of the consultation table to permit Federal projects that Congress has approved to be developed while doing what is necessary to protect endangered and threatened species and their critical habitats.

Our list of projects that might pose problems is based upon our ability to anticipate these kinds of problems. Our experience to date reveals that the problems that often are most vexing are those that cannot be anticipated readily. We have dealt with these effectively in the past, but it is obvious that the potential for greater complexity and a resultant increased difficulty in resolving problems is real and growing.

We remain confident that good-faith consultation is the key to the successful resolution of conflicts between projects or programs and the Endangered Species Act. Let me make it clear that I would hope and expect that most consultations will lead to a resolution satisfactory to the needs of both the species and the project. However, this is not to say that impasses will not occur.

I am pleased to reiterate that this Department will do its utmost to carry out its responsibilities under the Act and that we will always approach the resolution of conflicts in good faith.

Sincerely yours,

ROBERT L. HERBST,
Assistant Secretary for Fish and Wildlife and Parks.

THE TELLICO DAM

Mr. KENNEDY. Mr. President, throughout the well-publicized debate on the fate of the Tellico Dam, one vital fact has somehow escaped public attention. While we may have been amused by pictures of the snail darter on the front pages of major newspapers across the country, we have ignored a much more serious issue involving this project. The fact is that completion of this project will destroy the ancestral home and heritage of the Overhill Cherokee Indians.

More than 100 archaeological sites have been located in the Tellico project area, including the Cherokee towns of Tanasi, which gave its name to the State of Tennessee, and Chota, the ancient capital of the Cherokee Nation. The Cherokees have continually protested the Government's complete lack of sensitivity to the privacy of their sacred grounds. The treatment of these Indians throughout the archeological investigations has been disgraceful. I understand that the investigations involved the removal of bones and other skeletal material from the graves of ancestors of Cherokees who are living today in western North Carolina and elsewhere. Yet, TVA never received the permission of the Cherokees to examine or remove material from these grave sites, although the Cherokees have publicly protested that these actions amount to "grave robbing."

The Supreme Court decision only addressed the question of protecting an endangered species, but fortunately, it has prompted a comprehensive evaluation of the options now available to the TVA with respect to this project. S. David Freeman, TVA board chairman, has assured us that the Authority will report to the Congress and the public by August 10, 1978. I have asked the TVA to explore the possibility of recreating Indian villages that once flourished in the Little Tennessee River Valley as historical and cultural resource for all Americans.

Of course, other important issues will be addressed in the report, including whether it might be possible to move the snail darter to another, more safer habitat. Protection of a scenic river and prime farmland will also be explored.

Mr. President, I believe it would be imprudent for the Senate to act to exempt the Tellico Dam from the provisions of the Endangered Species Act before the TVA has had an opportunity to issue its report. The project may be continued in a manner which best serves the interests of the taxpayers, as well as being consistent with our efforts to protect endangered species. I therefore urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

Mr. CULVER. Mr. President, I ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The question is on agreeing to the amendment of the Senator from Wisconsin.

Mr. CULVER. Does the Senator want the yeas and nays?

Mr. NELSON. I did not intend to ask for the yeas and nays and I will not. I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. GARN. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GARN. Does the sponsor of the amendment have to have the concurrence of his cosponsors in order to withdraw an amendment?

The PRESIDING OFFICER. No, he does not.

The bill is open to further amendment.

AMENDMENT NO. 1421

Mr. WEICKER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. WEICKER) proposes an unprinted amendment No. 1421:

On page 12, immediately after subsection (e) (2) (C), add the following:

"(D) no more than one endangered species will be affected; and

"(E) no additional species that are biologically dependent on an affected species will become threatened, endangered or extinct through such action."

Mr. WEICKER. Mr. President, S. 2899 establishes——

Mr. CULVER. Mr. President, I do not know that we have a copy of the amendment of the Senator. Are copies available?

Mr. WEICKER. I certainly want the chairman of the committee to have a copy.

Mr. President, S. 2899 establishes an Interagency Committee with the power to grant exemptions to the Endangered Species Act. The committee will have the authority to grant an exemption after weighing the benefits of a Federal agency project against the value of preserving an endangered species.

It is entirely possible, however, that action by a Federal agency could affect more than one endangered species. First, a project could threaten two unrelated species separately. Second, a project could, by endangering the future of one species, subsequently destroy another species which has a biological dependence on the first.

Biologically dependent species could be one that is part of the food chain in which the affected species belongs. By further endangering or causing the extinction of that species, the chain may be broken. Several species could, therefore, be also endangered.

Other species are dependent symbiotically in which each species give the other some essential part of its livelihood.

The Culver-Baker proposal does not address the possibility of a conflict between a Federal agency project and more than one endangered species. I suggest that, since it will be a difficult enough decision to grant an exemption for a Federal agency when it causes the extinction of one species, we rule out any possibility of an exemption when two or more species are involved. I, therefore, propose an amendment to add to section 7(e)(2) two further limitations on the granting of an exemption by the Interagency Committee, as follows:

> (D) no more than one endangered species will be affected; and
>
> (E) no additional species that are biologically dependent on an affected species will become threatened, endangered or extinct through such action.

Mr. President, I hope the committee and the managers of the bill will be able to accept this amendment. I feel it in no wise affects the point which they attempt to make in the legislation, but does take into consideration a matter which I do not believe has been thought of, either in the committee or by anyone else associated with the bill.

Mr. WALLOP. Mr. President, as much as we might like to do, I do not think the committee can accept the amendment. Partly, it puts us into a posture of absurdly creating boundaries through a rational decision-making process that has been designed in the Culver-Baker amendment and the committee amendments thereto. Let me see if I can explain why.

The problem that comes about with limiting it to one is that the committee would not even be able to consider some projects for the existence of an irresolvable conflict. Having failed to allow the projects affected by this amendment into the consultation process, you will find that even though balancing of alternatives is badly needed the committee will not have jurisdiction to review the particular conflict.

Second, the fact that "no additional species that are biologically dependent on an affected species will become threatened, endangered, or extinct through such action" is effectively embodied in the Culver amendment as it is now. That is, "the benefits of such action clearly outweigh the benefits alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest", and "there has been a reasonable and responsible effort to resolve the conflicts which are known to exist, and the Federal agency requesting such exemption has made, subsequent to the initiation of the consultation under subsection (a) of this section, no irreversible or irretrievable commitment of resources which forecloses the consideration of modification or alternatives to such action."

I do not see how anybody could begin to come to the conclusion that you are going to find in favor of the elimination of the species only to create another endangered species in the act. I mean it is an inconceivable result the way it is.

I say to the Senator, with regard to the first, that it does nothing to limit it to a single species under the process of design. There is no cumulative value. The process is the same for 1 or for 20. The finding in each instance has to be precisely the same. So I do not see that the committee, as the Senator says, failed to consider it. I think we considered, in every instance, the problems that the Senator brings up.

Mr. **Weicker.** Mr. President, I should like to establish, then, some form of legislative record with the distinguished Senator from Wyoming. Is what the Senator from Wyoming says that the points made in this amendment are already embodied in the legislation?

Mr. **Wallop.** The points made in the second part of the amendment are already embodied in the legislation. The point made in the first one is an irretrievably binding restriction on the process that has been tried to be devised. What I am saying is that here is a process—if you have an irresolvable conflict, for example, one could not consider, if such came to the point, the Tennessce-Tombigbee Dam or the Columbia Dam, under this section. You just could not consider them at all if it came to an irresolvable conflict on more than one species.

The consideration for each species is exactly the same and the critical decisions that the Endangered Species Committee will have to make are the same for 1 species or 20. But they have to make similar findings for each species.

Mr. **Weicker.** In their consideration, in other words, the commission would have to take where there is more than one species involved?

Mr. **Wallop.** Where there is more than one species involved, the Endangered Species Committee would have to find precisely the same set of determinant factors in each instance.

Mr. **Weicker.** That satisfies the first point.

The second point is also the consideration of the agency in the matter of biologically dependent species will be taken into consideration. Is that what the Senator means?

Mr. **Wallop.** Especially, I might add, since the amendment of the Senator from Wisconsin requires an environmental impact statement in each instance, prior to even being able to be brought in front of the commission. Nobody can conceive of a moment in time where you would create an endangered species by the determination that you are going to eliminate an endangered species.

Mr. **Weicker.** I am satisfied, on the basis of the responses given to me by the Senator from Wyoming, that the points established in the amendment are, as a matter of substance, encompassed in the bill itself.

I want to make it clearly understood, however, that our dialog will be part of that legislative history, should the legislation pass, the points mentioned in the amendment are points for consideration.

Mr. **Wallop.** They sure are. I would not want to mislead the Senator that our committee bill does not contemplate that an irresolvable conflict on more than one species could not be presented to the Commission for decision, but their finding with regard to each species would have to be the same.

Mr. **Weicker.** And, where the situation exists in the case of biologically dependent species, this is a matter that would have to be taken into consideration, with the exact result that the Senator from Wyoming correctly stated—of, in effect, creating another endangered species by breaking the food chain?

Mr. **Wallop**. That is exactly right, and that would be covered, under any set of circumstances, in an environmental impact statement with regard to the habitat and species involved.

Mr. **Weicker**. Mr. President, I withdraw the amendment.

The **Presiding Officer**. The Senator has the right to withdraw the amendment.

The amendment was withdrawn.

Mr. **Sasser**. Mr. President, I compliment my friend and colleague (Mr. Baker) and also compliment the distinguished Senator from Iowa (Mr. Culver) and the members of the Environment and Public Works Committee for developing an amendment to the Endangered Species Act which I am pleased to support.

The recent Supreme Court decision in Hill against TVA has demonstrated that the intent of Congress in passing the Endangered Species Act needs further definition.

The Court interpretation of the act is inflexible.

It is rigid.

It leaves no latitude to provide for balancing the potential benefits resulting from completion of a public works project with the value of species preservation. That is assuming that a project would endanger some species.

The thing that complicates this whole issue is the fact that some projects have been partially—or even substantially—completed.

What do we do about those situations?

How do we resolve that issue?

Is it right for this act to be applied to projects underway or even substantially completed when it is enacted?

Is it right to halt summarily these projects, as Tellico Dam in east Tennessee was halted, because of the now-famous snail darter?

So I say we have to use some commonsense and find some way to reconcile the act with the obvious need to consider the fact that some projects were underway when the act was passed.

We do not need a string of half-completed projects strung out across the country as a monument to our lack of legislative foresight.

There should be legislation to help us over this hurdle.

And that is what it is hoped the Baker-Culver amendment will do.

This committee recommendation would establish a mechanism for mediating such disputes.

This approach appeals to me as an equitable solution to this dilemma.

The case of Tellico Dam points up the need for this type of mediation.

This dam is virtually completed—and yet, because of the Endangered Species Act, it cannot be completed.

Columbia Dam is the second half of the Duck River project in Tennessee which is 70 percent completed overall. Columbia Dam itself is 30 percent complete.

I suggest that the Mediation Committee look at two scales, two yardsticks.

One is the degree of completion of the project.

The other concerns the options available that will preserve an endangered species.

Obviously, when a project is still on the drawing board, a number of adjustments can be made—project modifications, alternative proposals, other options.

But once a project is underway, then the options may become more limited.

Then the committee should bring into play, along with all other matters, consideration of the financial investment, the commitment of local government and resources and its relationship to overall area planning.

However, the time is late—very late—for abandonment of the Tellico project since the project is virtually completed.

Costs are important.

Options suggested for Tellico include removal of part or all of the structure.

Such alternatives could cost as much as $16 to $40 million—on top of the $100 million already spent on the project.

This should be compared with $2 million required to complete the project as planned and perhaps an additional several million to mitigate damages to the species.

Another consideration is the fact that Tellico was the result of a three-county planning effort over a period of years.

The project evolved in response to specific needs in the area—the need for employment, the need to reduce outmigration of young people, and similar economic factors. The area had high rates of unemployment and outmigration.

TVA, working with the people in the area, led to development of a project design which responds to these specific needs.

So the instant issue is: Do we discard all the ground rules, all of this planning and the result of the planning—Tellico Dam—and shift to a new approach?

Do we shift from expanded industrial development to emphasis on agriculture and park development?

Does that make sense after all the time, effort, and funds expended to plan for and construct the dam?

I do not think it does.

I favor a commonsense approach.

As a Senator from an affected State, I hope that we can accept this moderate amendment to the act as the best solution.

I believe this will set in motion the machinery that will solve our double dilemma in Tennessee.

Mr. President, this concludes my statement on the bill. I wonder if the managers of the bill agree with my views on this matter.

Mr. BAKER. Mr. President, will the Senator yield to me at this moment?

Mr. WALLOP. Mr. President, I yield to the Senator from Tennessee so much time as he requires.

Mr. BAKER. Mr. President, I take this opportunity to thank my colleague from Tennessee for his remarks and the important colloquy that he has engaged in. It will be materially important in the interpretation of this act if this act is, indeed, passed with the amendments that have been added in committee. I think it is a good approach and I am particularly pleased that both of us are in accord on the importance and the effectiveness of this approach to this problem.

I thank my colleague.

Mr. Culver. Mr. President, on this one point, I wish to comment on Mr. Sasser's concerns, then I shall be delighted to take up the amendment of the Senator from Pennsylvania.

I thank the gentleman from Tennessee for his generous remarks about the committee bill, S. 2899. He is correct in stating that among the issues considered by the Endangered Species Committee in reviewing a project are the physical state of the area affected by the action at the time of review, the range of alternatives reasonably available to the action and, of course, many other relevant factors involved.

Obviously, the action itself might already have resulted in drastic changes in the physical environment of the area, making more difficult certain alternatives which might have been present at an earlier stage of construction.

If Tellico should be appealed to the Endangered Species Committee, it would have the same right to review and consideration of all relevant issues as any other project. The decision of the committee should be based on the merits of the case taking into consideration the benefits of alternatives to the project consistent with preserving the species.

I thank the Chair.

The Presiding Officer. The Senator from Pennsylvania.

AMENDMENT NO. 3232

(Purpose: To prohibit representatives of members of the Committee from casting votes or being considered for purposes of a quorum at any voting session of the Committee)

Mr. Heinz. Mr. President, I call up my amendment No. 3232 and ask that it be stated.

The Presiding Officer. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. Heinz) proposes an amendment numbered 3232.

Mr. Heinz. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 9, between lines 16 and 17, insert the following new paragraph:

"(14) Except in the case of a member designated pursuant to paragraph (3)(G) of this subsection, no member shall designate any person to serve as his or her representative unless that person is, at the time of such designation, holding a Federal office the appointment to which is subject to the advice and consent of the United States Senate. In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.".

On page 5, line 6, immediately before the period insert a comma and the following: "except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.".

Mr. Heinz. Mr. President, this amendment to S. 2899 is a very simple and straightforward amendment.

The amendment simply seeks to require two things. First, that with respect to the six Federal members of the seven-member Endangered

Species Committee, that any representative to be named by a member of the committee to sit for him when he, the statutorily designated member, cannot be present be a Federal official serving subject to the advice and consent of the Senate.

The second requirement of the amendment is that it would preclude any proxy representation of a statutorily authorized member from sitting in at a meeting where an actual vote of the Endangered Species Committee would take place.

That is to say, only the members themselves as we designate by statute could be present when a decision to exempt or not exempt is being made.

I think in both instances, Mr. President, the decisions of this committee are so important to our country and to posterity that we do not want any nameless, bureaucrats sitting in at discursive meetings of this committee.

Equally important, we do not want any second line people sitting in when the real decisions are going to be made.

Mr. President, my amendment to S. 2899, a bill to amend the Endangered Species Act of 1973, S. 2899, would establish an Endangered Species Committee composed of the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the Interior (where appropriate, the Secretary of the Interior in concurrence with the Secretary of Commerce), the Secretary of the Smithsonian Institution, and the Governor of the State in which the conflict exists. The committee would have the responsibility of granting or denying exemptions from section 7 of the Endangered Species Act which directs Federal agencies to assure that their actions will not harm an endangered species or habitat as determined by the Secretary of the Interior, and, for marine species, the Secretary of Commerce.

I wish to commend my colleagues on the Committee on Environment and Public Works for their attempt to preserve the integrity of the consultation process specified under section 7 of the Endangered Species Act. I commend them also for their foresight in understanding the need for a balancing of viewpoints concerning all of the alternatives to be considered. The establishment of an Endangered Species Committee to intervene in those instances where the consultation process between a project agency and the Fish and Wildlife Service has been exhausted, but conflict still exists, is indeed a logical and pragmatic approach to the fullfillment of the goal of the act.

The amendment which I offer today concerns section 7(b)(5) of the act which states:

> Seven members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee.

My amendment would require, first, that any representative to be named by a member of the committee, with the exception of the Governor, be a Federal official serving subject to the advice and consent of the Senate. Further and second, my amendment would preclude any representative of a statutorily authorized member from sitting in a meeting at which an actual vote will take place. That is, only members themselves must be present whenever the decision to exempt or not to exempt is made.

Mr. President, the bottom line presented by S. 2899 is simply that the Endangered Species Committee will be called upon to make the sensitive and critical decision to exempt a species from the protection of the act. I believe that such a decision, which may result in the elimination of a species of life from the face of the Earth, demands the attention of those serving at the highest levels of authority. Americans should expect, and accept, no less. Such decisions must be made after all of the evidence has been carefully considered by those who have demonstrated the leadership and judgment and the experience and the expertise to qualify them for high office. Such decisions must not be left to an unreachable, unaccountable bureaucratic designee of the Endangered Species Committee member.

In his discussion of the Senate confirmation process, my distinguished colleague, Senator Eagleton, described this—the confirmation procedure—"essential to safeguard against incompetency or conflicts of interest in high office." There are many competent, experienced people serving in high office today who have been confirmed by the Senate in their present positions, and I believe we ought specifically to call upon this resource of talented officials to serve as representatives, when necessary, on behalf of any member of the Endangered Species Committee who for some reason is unable to attend a meeting personally. Of course, I fully expect that every member will strive to be in attendance each time a meeting of this important body is called. Nevertheless, I understand that occasionally a conflict in schedule will necessitate a designee, and I want to be sure that that designee is the best person available and accountable to perform the job. I believe that those serving subject to the advice and consent of the Senate meet that criteria. And when any decision is to be made, because of its effect on posterity, we can do no less than to require that the statutorily authorized members of the committee, and they alone, make the final or fateful judgment.

I recognize that there are times when legitimate economic priorities collide with our environmental sensibilities. I appreciate and share the concern of my colleagues who believe that new legislation should not threaten our ability to protect endangered species.

The importance of this issue is well articulated by Phillip Shabecoff, an outstanding journalist, who recently wrote:

> The most devastating impact on wild antimals and plants comes from the destruction of their natural habitats by human activity. As forests are leveled, wetlands drained, water tables lowered, and natural ecosystems paved over for roads, dams, shopping centers, and suburbs, the elbow room and nutrients required by a broad range of species are rapidly diminishing . . . So bleak is the picture, in fact, that the bulldozer and not the atomic bomb may turn out to be the most destructive invention of the 20th century.

Mr. President, we have a responsibility to be sure that the mechanism we put in place to make those difficult decisions be of the highest quality possible. It is for that reason that my amendment would limit the representatives for the members of the Endangered Species Committee to those individuals serving subject to the advice and consent of the Senate.

Mr. President, it is my understanding that the committee has carefully studied this amendment and it is my understanding that there is no objection.

Mr. Wallop addressed the Chair.

The Presiding Officer (Mr. Melcher). The Senator from Wyoming.

Mr. Wallop. Mr. President, the Senator is correct. I do not think there is any objection, but I want to clarify one point on page 2 of the Senator's amendment. That is that in no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

Would the Senator contemplate that a member of the commission be able to cast a vote in writing?

Mr. Heinz. Does the Senator mean, would a proxy vote——

Mr. Wallop. No, by a specific, written vote. When the question has been discussed and the decision has been made. Not the kind of situation where a member would say, "I give my proxy to you, cast it whatever way you will," but a proxy that has been designed and tailored to answer the question before the committee.

Mr. Heinz. It is customary, I say to my good friend, that such rules are usually made by the committee themselves.

Here in the Senate we make our own rules and, as long as their rules are consistent with ours, the committees make their rules.

I do not wish to tell the committee how to operate there. But I do not think it would be inconsistent with the spirit of my amendment for the statutorily authorized member to set forth in writing with great specificity the particular issues, how he intended to vote on it, should he for some fairly extraordinary reason not be able to be there.

I would also want to see for the record, because I think it is important, a sufficient explanation with that vote so we could be sure that the vote was thoroughly thought through and sufficiently justified.

It would not be my intent to preclude that, either.

Mr. Wallop. Nor would it be mine.

Mr. Heinz. Although I think it has the final decision. Whether voting is going to take place in the absence of members is up to the committee. That is their final decision.

Mr. Wallop. I would say this. The Senator has done a service by insisting we do not have some low-level bureaucrat who just acts on his own making these critical national and historical decisions.

I would suggest we would not want to encourage any loose use of proxies in this commission, so somebody cannot say, "Are you going to Chicago for that vote? I really do not feel like it, so make up my mind for me."

Mr. Heinz. I would say to the Senator that he is precisely correct. Indeed, the intent of my amendment is to prohibit the use of any kind of blanket proxy.

Mr. Wallop. That is good.

I think in light of that the Senator from Pennsylvania has provided an amendment which strikes a good balance. I do not see any objection.

Mr. President, I compliment the Senator for tying this down to the more important people in the Cabinet and executive branch of the U.S. Government.

Mr. Heinz. I thank my good friend.

The Presiding Officer. Is all time yielded back?

Mr. Heinz. I yield back the remainder of my time.

Mr. Wallop. I yield back the remainder of my time.

The Presiding Officer. The question recurs on the amendment offered by the Senator from Pennsylvania.

The amendment (No. 3232) was agreed to.

The Presiding Officer. The Senator from Virginia.

AMENDMENT NO. 3115

(Purpose: To revise the purposes of the Endangered Species Act)

Mr. Scott. Mr. President, I call up my amendment No. 3115.

The legislative clerk read as follows:

The Senator from Virginia (Mr. Scott) proposes an amendment numbered 3115.

Mr. Scott. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new section:

Sec.—.Section 2(b) of the Endangered Species Act of 1973 (16 U.S.C. 1531(b)) is amended by inserting before the period at the end thereof the following: ", consistent with the welfare and national goals of the people of the United States".

Mr. Scott. Mr. President, This is one of a series of amendments which would revise the bill before us to include terminology that differs somewhat in the various amendments but in each instance has the effect of providing that the welfare of the human species be considered.

As indicated in some detail on Monday, it appears that the 1973 Endangered Species Act attempted in a most successful manner to concentrate on the protection of fish, wildlife and plants but neglected to give sufficient emphasis to our own welfare, to the fact that mankind is superior to animal and plant life and both are under the dominion of man.

This particular amendment, 3115, would revise section 2(b) of the 1973 Endangered Species Act to add the words "consistent with the welfare and national goals of the people of the United States." In other words, as set forth in the paragraph (b) of title 16, section 1532 of the United States Code would then read as follows:

> The purposes of the chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section, consistent with the welfare and national goals of the people of the United States.

My amendment merely adds the last few words: "consistent with the welfare and national goals of the people of the United States."

Mr. President, I hope the floor leaders will accept this amendment. I believe it is in the public interest.

Mr. President, in its opinion dated June 15, 1978 in TVA against Hill, the Supreme Court indicated Congress had commanded all Federal agencies to do nothing that would jeopardize the continued existence of an endangered species or result in the destruction or modification of the habitat of such species. It added that the language admits of no exceptions, and elsewhere indicated Congressmen uniformly deplored the irreplaceable loss to aesthetic, science and ecology and the national heritage should more species disappear.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SCOTT. Mr. President, on page 25 of the opinion it is stated, "as it was finally passed, the Endangered Species Act of 1973 represented the most comprehensive legislation for the preservation of endangered species ever enacted by any Nation." And on page 29 the Court stated, "the plain intent of Congress in enacting this statute was to halt and reverse the trend toward species' extinction, whatever the cost. This is reflected not only in the stated policies of the act but in literally every section of the statute." Then on page 38 the Court says, "our system of Government is after all a tripartite one with each branch having certain defined functions delegated to it by the Constitution." Later, on page 39, "it is equally and—emphatically—the exclusive province of the Congress not only to formulate legislative policies, mandate programs and projects but to also establish their relative priority for the Nation." Further along the opinion states, "we do not sit as a committee of review, nor are we vested with a power of veto."

Therefore, Mr. President, if any action is to be taken to relieve the rigidity of this act, it must be done by the Congress. In the TVA case we are told in a footnote in the dissenting opinion by Mr. Justice Powell quoting from the record in the trial court that new species of darters are discovered in Tennessee at the rate of about one a year; that 8 to 10 have been discovered in the last 5 years; that all told, there are approximately 130 species of darters; that 85 to 90 of them are found in Tennessee, 40 to 45 in the Tennessee River system and 11 in the Little Tennessee itself. Nevertheless, this one subspecies of perch, the snail darter, one out of 130 species of darters, has halted a project costing many millions of dollars.

Mr. President, the more important part of my remarks are the remainder.

In my own State of Virginia, the clean-up of the aftermath of three disastrous floods in the southwestern part of our State has at least been halted temporarily because there, too, another species of darters has been found along with a freshwater clam. I spoke with the Congressman representing this area with regard to the clam, and he told me that no one made any use of the clams, that if anyone ate them, it may have been the Indians, some centuries ago. But four people lost their lives in these floods, 16 counties were declared a disaster area, and property damage approximated $275 million. Yet, the work necessary to reestablish human habitats has been halted. This has been done under the Endangered Species Act, even though we are told that the human species is the highest type of animal life; that this is a Government of the people, by the people, and for the people. We are told that human life is important in our country, that we attempt to export human rights.

I hope, Mr. President, that the managers of the bill will accept the addition of the words "consistent with the welfare and national goals of the people of the United States." It would otherwise put the welfare of fish above human welfare. This is a rural and a mountainous section of Virginia; but I believe there is nothing more precious in our State and in all other States than human life. It must be protected.

I reserve the remainder of my time.

Mr. Culver. Mr. President, I reluctantly oppose the amendment that has been proposed by the distinguished Senator from Virginia.

I believe that Congress and the U.S. Supreme Court have stated that the protection of endangered species is consistent with the welfare of the American people and, for that matter, the people of the entire world. Our ultimate view, I think, may well depend upon this and the responsibilities we carry toward our own children for the proper stewardship of this obligation.

The goals of the American people, on the other hand, are variable with time, and they often are not the same from person to person or either from Senator to Senator. What constitutes a proper goal for the welfare of the American people is a matter of constant debate. We have certain protections, of course, embedded in our Constitution and Bill of Rights that are rather generally recognized and respected. But the importance of protecting the world that we live in is in fact a timeless responsibility. Mistakes that will be made in that regard are frankly irreversible, and I think it is far better to leave the purpose of the act strong as we have presented it. S. 2899 does provide a mechanism for evaluating specific cases. It does provide us a mechanism for evaluating specific cases where welfare and goals of the people are always considered responsibly within context of the review process itself. So it is not an either/or proposition. But I do think that I will find it necessary to oppose the amendment. I believe it is unnecessary and possibly could be misunderstood.

Mr. Scott. Mr. President, as I understand the committee would be established by the bill before us it would be a cabinet level committee that would consider only national and regional projects, not local, not State projects. It would require that all seven members of the committee be present to constitute a quorum. If I am wrong I am glad to hear from the manager of the bill. I have read the bill, however.

Mr. Culver. In order to exempt a project it is necessary for endangered species five of the seven committee members to have satisfied themselves with regard to three explicit criteria, one of which is that the project is of either national or regional significance. But one cannot make that ultimate finding until he has completed the review process. The threshold question of what constitutes local, regional, national, or indeed international would not be made until that process is fully completed.

It is possible that you can have a local project walk in the front door, but no one would know the color of its clothes until someone makes that decision during the period that it is under review. That has to be completed under a time frame of 180 days.

Mr. Scott. My understanding is that that——

Mr. Culver. Excuse me. As to the quorum question, the Senator is correct. It does require seven.

Mr. Scott. It is my understanding that there can be designees representing the principals, but if one individual chose not to be present or not to designate a designee to act on his behalf, there could be no meeting of that committee because there would not be a quorum. Is this correct?

Mr. CULVER. I believe that under the Heinz amendment that the Senate just accepted it would provide for the Cabinet level officer to designate a substitute. That designated substitute would have to, however, be of sufficient rank to have required Senate confirmation. Perhaps the Senator from Pennsylvania, who I see on his feet, would like to elaborate on that if any additional elaboration is necessary.

Mr. SCOTT. I might ask my friend from Pennsylvania, could the designee vote? As provided in the bill that is before us, the designee could not vote, unless it be changed.

Mr. HEINZ. Under the Heinz amendment, the designee of the statutorily authorized member of the committee could not vote.

Mr. SCOTT. Then under the bill, you have five principals who must be present and voting. Everyone must be present. You have to have seven present to constitute a quorum. Does the Senator's amendment change that?

Mr. HEINZ. No, my amendment does not change that.

Mr. SCOTT. I thank the distinguished Senator. But what I am saying is that one individual, the head of the Environmental Protection Agency, the Secretary of the Interior, the head of the Smithsonian Institute, or any one of the individuals, could keep this committee from functioning. To me this just does not make sense.

Mr. HEINZ. Mr. President, will the Senator from Virginia yield?

Mr. SCOTT. If I might continue, because I am concerned about the welfare of the people of Virginia, I am concerned about the four Virginians who lost their lives in a flood in the southwestern part of Virginia. I will not yield.

Mr. HEINZ. The Senator asked about the Heinz amendment.

Mr. SCOTT. Mr. President, I will not yield.

Mr. HEINZ. I was hopeful that I could respond to the Senator.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. SCOTT. Mr. President, I am concerned about human life. To me human life takes priority over that of any fish, of any wildlife, of any species of plants. In Virginia we had three floods in 2 years. The flood reached an elevation several feet above the 100-year mark, several feet above the mark that the authorities determined that water would rise once in 100 years' time. We had several hundred million dollars worth of property destroyed. That is animal habitat, that is human habitat, and yet we are trying to protect fish.

The PRESIDING OFFICER. The time of the Senator from Virginia has expired.

The Senator from Iowa.

Mr. CULVER. Mr. President, I wish to commend the Senator from Virginia not on the amendment but on the question that he has raised with regard to the procedures for quorum calls and terms of quorum to do business.

I wish to review that, I believe we are going to carry this bill over until tomorrow.

Mr. SCOTT. I do have an amendment that will change that.

Mr. CULVER. If the Senator does have an amendment on that, perhaps we can take a look at it and discuss it.

Mr. Scott. I thank the Senator.

Mr. Culver. I know this is a matter that he has some concern about, and I think frankly that we could perhaps be receptive to some changes in this regard, and I wish to express appreciation to the Senator from Virginia for having brought that to the committee's attention.

Mr. Scott. I appreciate the Senator's comments.

Does the Senator yield back his time?

Mr. Culver. Yes. I yield back the remainder of my time.

The Presiding Officer. All time has been yielded back.

The question is on agreeing to the amendment of the Senator from Virginia. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. Cranston. I announce that the Senator from South Dakota (Mr. Abourezk) and the Senator from Hawaii (Mr. Inouye) are necessarily absent.

Mr. Stevens. I announce that the Senator from Texas (Mr. Tower) is necessarily absent.

I also announce that the Senator from Maryland (Mr. Mathias) is absent on official business.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 10, nays 86, as follows:

[Rollcall Vote No. 221 Leg.]

YEAS—10

Cannon
Curtis
Garn
Hatch
Helms
Laxalt
Long
Scott
Stennis
Young

NAYS—86

Allen
Anderson
Baker
Bartlett
Bayh
Bellmon
Bentsen
Biden
Brooke
Bumpers
Burdick
Byrd
  Harry F., Jr.
Byrd, Robert C.
Case
Chafee
Chiles
Church
Clark
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durkin
Eagleton
Eastland
Ford
Glenn
Goldwater
Gravel
Griffin
Hansen
Hart
Haskell
Hatfield, Mark O.
Hatfield, Paul G.
Hathaway
Hayakawa
Heinz
Hodges
Hollings
Huddleston
Humphrey
Jackson
Javits
Johnston
Kennedy
Leahy
Lugar
Magnuson
Matsunaga
McClure
McGovern
McIntyre
Melcher
Metzenbaum
Morgan
Moynihan
Muskie
Nelson
Nunn
Packwood
Pearson
Pell
Percy
Proxmire
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Sparkman
Stafford
Stevens
Stevenson
Stone
Talmadge
Thurmond
Wallop
Weicker
Williams
Zorinsky

NOT VOTING—4

Abourezk Inouye Tower
Mathias

AMENDMENT NO. 1422

(Purpose: To define "critical habitat")

Mr. McClure. Mr. President, I have an amendment at the desk. I ask that it be reported.

The Presiding Officer. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McClure) proposes an unprinted amendment numbered 1422. On page 2, line 3—

Mr. McClure. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 3, insert the following:

Sec. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended:

(1) by inserting after paragraph (5) thereof the following new paragraph:

"(6) the term 'critical habitat' for a threatened or endangered species means:

"(A) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (1) essential to the conservation of the species and (2) which require special management considerations or protection;

"(B) 'critical habitat' for a threatened or endangered species may include specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this act, into which the species can be expected to expand naturally upon a determination by the Secretary at the time it is listed, that such areas are essential for the conservation of the species.

"(C) critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subsection (A) and (B) of this section;

"(D) except in those circumstances determined by the Secretary, critical habitat will not include the entire geographical area which can be occupied by the threatened or endangered species."

(2) by renumbering the paragraphs thereof, including any references thereto, as paragraphs (1) through (20) respectively.

Mr. Culver. Mr. President, may we have order in the Senate?

The Presiding Officer. The Senate will come to order. The Senator from Idaho is presenting an amendment. It would help the process of the Senate this evening if we might have more order and less discussion on the floor.

The Senator from Idaho may proceed.

Mr. McClure. I yield to the Senator from Indiana for a unanimous consent request.

Mr. Bayh. I thank my friend from Idaho.

Mr. President, I ask unanimous consent that Eve Lubalin and Ann Church of my staff be granted the privileges of the floor during all debate and votes on S. 2899, the Endangered Species Act.

The President Officer. Without objection, it is so ordered.

Mr. McClure. Mr. President, the amendment which I have offered deals with the establishment of a critical habitat, the manner in which that is to be done, and primarily and most importantly, the extension of the area of the critical habitat once established.

It allows the Secretary of the Interior to establish not only the area where the endangered or threatened species is then present but that area in which they might be expected to expand. However, the designation must be made at the time they are placed on the list. For the species which are now on the list and for which no critical habitat has been established, it would permit the designation of the critical habitat area of such species and, again, the area in which they might be expected to naturally expand, if necessary, for the conservation of that species.

Mr. President, this is in response to the difficulty of how large an area should there be established and if that species then expands beyond that area must human beings then be displaced in that area.

It has become a critical problem for those of us who live near Yellowstone National Park as the grizzly bear, which is on the endangered species list, ranges outside the park and human beings must then be displaced, even though human beings have lived there for a long while, because the bear chooses to change its place of residence.

Mr. President, I understand that the language, which we have worked out rather arduously throughout discussions all afternoon, is acceptable to the managers of the bill.

Mr. WALLOP. Mr. President, the Senator is correct. I compliment the Senator from Idaho for his genuine persistence and willingness to work out the real problems we perceived in this matter.

The Senator is quite correct. One of the things that the hearings brought out was that the Fish and Wildlife Service was having a difficult time in its own mind distinguishing between critical habitat and range. It seems to me that the Senator from Idaho has taken a definition which was operative for them and given it statutory authority, the slightly more specific nature of statutory language than is in the regulation. I compliment the Senator.

The managers on both sides accept the language. I yield back the remainder of my time.

Mr. MCCLURE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3113

(Purpose: To limit the definition of threatened species to those which are of substantial benefit to mankind)

Mr. SCOTT. Mr. President, I call up my amendment numbered 3113, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Virginia proposes an amendment numbered 3113.

Mr. SCOTT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new section:

SEC. . Section 3(15) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (15) is amended by inserting before the period at the end thereof the following: ", and which the Secretary has determined is of a substantial benefit to mankind.".

Mr. SCOTT. Mr. President, this amendment would change the definition of the term endangered species by adding the words "and which the Secretary has determined is of substantial benefit to mankind." That is all it does. So paragraph 15 would read:

> The term endangered species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and which the Secretary has determined is of a substantial benefit to mankind.

Mr. President, this amendment is merely another in a series that would tend to relieve the inflexibility of the act and would complement the provisions of the bill which provide for a review committee of cabinet level known as the Endangered Species Interagency Committee.

I believe that protected, endangered, or threatened species should be those of substantial benefit to mankind. Our Government at all levels exists for the benefit of serving people. People should have dominion over fish, wildlife, and plants. Only where the lower species are of benefit to mankind are they important. That, in my judgment, does not take away from their value but, in fact, adds to their value by the concept of serving mankind.

I would hope that through a series of amendments the provisions for a cabinet-level committee can be complemented so that provision can be made to reduce the inflexibility at the local and State level as well as the regional and national level.

The Supreme Court has unequivocally said that the only recourse a citizen has for relief under this act is from the Congress, the elected representatives of the people. We want to protect our fish, wildlife, and plants which are beneficial to mankind, but when we learned of the 1.4 million species of wildlife, the 600,000 species of plants, and the 3 to 5 times those numbers when we consider the subspecies, we should segregate those which are beneficial to mankind from those which do not serve any known beneficial purpose. This would not suggest——

(Disturbance in the gallery.)

The PRESIDING OFFICER. The Senator will suspend until the Sergeant at Arms has restored order in the gallery.

Has the Sergeant at Arms restored order in the gallery?

The Senator from Virginia may proceed.

Mr. SCOTT. Mr. President, we want to protect our fish, wildlife, and plants which are beneficial to mankind, but when we learned of the 1.4 million species of wildlife and the 600,000 species of plants and the 3 to 5 times those numbers when we consider subspecies, we should segregate those which are beneficial to mankind from those which do not serve any beneficial purpose. This would not suggest the destruction of any fish, any wildlife, or plants, but would segregate those of benefit to mankind, those entitled to special protection, from those which have no known benefit.

I would hope, Mr. President, that the floor managers would accept this amendment and others to be offered later. I reserve the remainder of my time.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. **Culver.** Mr. President, the hour is obviously late. I will just take a moment to rise in opposition to the amendment.

The amendment would add to the current definition of the term "threatened species" the requirement that the Secretary of the Interior determine the species to be of substantial benefit to mankind. This assumes, of course, that species are all valueless unless a specific use or a particular benefit for humans can be found.

It seems to me that we can never know, Mr. President, at any given point in time what the particular value a species may or may not have for humans.

As I mentioned earlier in the day, the horseshoe crab has existed for 200 million years, and it was just 3 years ago, Mr. President, that it was determined that the blood of that animal is a detector of toxins in intravenous fluids, a very significant breakthrough in medical science.

Finally, Mr. President, I think it is safe to assume that the loss of a species is harmful, and even threatening, to mankind because we are fundamentally reliant on an ecosystem which we frankly do not fully understand.

I urge the Senate to vote in opposition to the amendment.

Mr. **Wallop.** Mr. President, there is just one other point that I should like to make to the Senate before voting on the amendment of the distinguished Senator from Virginia. I understand what it is that he is trying to do, and would like to note that the committee has already looked into the problem that he states.

He seeks to give the decision as to the benefits to mankind of a given species, a given "critter" on this Earth, to one person. We have given that decision to the whole Commission after the consultation process, after the whole series of other benefits that might or might not exist in relative nature to a given project have been considered. To require a judgment on the part of one person that one species, one "critter," anywhere on this Earth, is or is not of benefit to mankind is to require that person to step into the shoes of God. I suspect that person would be most loath to do it and we would have more, not less, endangered species.

Mr. **Scott.** Mr. President, I shall be very brief. I am going to repeat something I said when my last amendment was defeated and only received 10 affirmative votes because we had less than 10 people on the floor. One of the reasons I am offering this series of amendments is that, in southwest Virginia, in a rural area, there were disastrous floods. Sixteen counties were declared a disaster area. Four people lost their lives, $275 million in property damage. The habitats of the human beings were wiped out in that area. Yet the Corps of Engineers was stopped from doing repair work because of another snail darter fish, 1 of 130 darters in the species—130 of them, and they found another snail darter in southwest Virginia. Four people lost their lives and we cannot do any repair work.

People are more important than fish. That is what I am asking you to vote for.

I am glad to yield back the remainder of my time.

Mr. **Culver.** I yield back my time and request a vote on the pending amendment.

The Presiding Officer (Mr. Paul G. Hatfield). The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Cranston. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Florida (Mr. Chiles), the Senator from Mississippi (Mr. Eastland), the Senator from Hawaii (Mr. Inouye), the Senator from Connecticut (Mr. Ribicoff), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

Mr. Stevens. I announce that the Senator from Nebraska (Mr. Curtis), the Senator from Vermont (Mr. Stafford), the Senator from Texas (Mr. Tower), and the Senator from North Dakota (Mr. Young) are necessarily absent.

I also announced that the Senator from Maryland (Mr. Mathias) is absent on official business.

I further announce that, if present and voting, the Senator from Texas (Mr. Tower) would vote "nay."

The result was announced—yeas 2, nays 87, as follows:

[Rollcall Vote No. 222 Leg.]

YEAS—2

Laxalt
Scott

NAYS—87

Allen
Anderson
Baker
Bartlett
Bayh
Bellmon
Bentsen
Biden
Brooke
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Case
Chafee
Church
Clark
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durkin
Eagleton
Ford
Garn
Glenn
Goldwater
Gravel
Griffin
Hansen
Hart
Haskell
Hatch
Hatfield, Mark O.
Hatfield, Paul G.
Hathaway
Hayakawa
Heinz
Helms
Hodges
Hollings
Huddleston
Humphrey
Jackson
Javits
Johnston
Kennedy
Leahy
Long
Lugar
Magnuson
Matsunaga
McClure
McGovern
McIntyre
Melcher
Metzenbaum
Morgan
Moynihan
Muskie
Nelson
Nunn
Packwood
Pearson
Pell
Percy
Proxmire
Randolph
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Sparkman
Stevens
Stevenson
Stone
Talmadge
Thurmond
Wallop
Weicker
Williams
Zorinsky

NOT VOTING—11

Abourezk
Chiles
Curtis
Eastland
Inouye
Mathias
Ribicoff
Stafford
Stennis
Tower
Young

So Mr. Scott's amendment (No. 3113) was rejected.

RED WOLF ENDANGERED SPECIES PROJECT, CAPE ROMAIN, S.C.

Mr. **THURMOND**. Mr. President, besides the many other worthy programs which have grown out of the Endangered Species Act of 1973, I wish to speak up in behalf of one particular project within my own State.

I have reference to the red wolf project which is currently being conducted on Bulls Island, S.C., within the Cape Romain Fish and Wildlife Refuge.

In the fall of 1976, two red wolves were placed on Bulls Island and released in early 1977. Unfortunately, the female developed an infection and the effort failed.

However, last year, the experiment was repeated and, following release of the pair early this year, there is reason to believe the wolves have a den of pups on nearby Capers Island.

This is an important development in our endangered species program, as the red wolf is down to an estimated 50 animals in a wild state.

This species was established along the eastern coastal plains when our country was first settled but, as towns and cities developed and the population grew, the species was driven west until nearly wiped out.

It is my understanding that the fiscal year budget contains $24,000 to continue this program at Cape Romain, where employees of the Fish and Wildlife Service have given much effort to the project.

Mr. President, the red wolf project in South Carolina has met with excellent cooperation from the State Wildlife and Marine Resource Department. The managers of the project also advise that this effort has been well received by the people of our State.

The Fish and Wildlife Service has been accomplishing a great deal to help save and restore our endangered species by virtue of the 1973 act. It is unfortunate that the Government did not pay more attention to the Audubon Society and other groups earlier in order that other species might have been saved.

Two of our great ornithologists, John James Audubon and Alexander Wilson, wrote for us interesting reports on the carolina parrot, the passenger pigeon, and other birds which are now extinct. Today, South Carolina is rarely visited by the long-billed curlew, which Audubon so beautifully depicted with the city of Charleston in the background. Even today our citizens are fighting to preserve the environment to protect birds such as Bachman's warbler, a species discovered by Audubon's friend, Dr. John Bachman, of Charleston, in the early 1800's.

Mr. President, I commend the leaders in the Fish and Wildlife Service for the red wolf and other projects aimed at protecting our endangered species. We need to do more in this area, and I think the American public will gladly support such an effort.

Mr. **MCGOVERN**. Mr. President, the Senate is today discussing the merits of the 1973 Endangered Species Act in the context of determining what its future will be during the next 3 fiscal years. As my colleagues are aware, our options today are to leave the act as is, weaken it, or alter the way it is applied in an effort to remedy what are perceived as problems with the act.

Much of the public discussion and perception of what this act is all about centers upon the U.S. Supreme Court's recent ruling on the Tennessee Valley Authority's Tellico Dam and the effect it would have upon the snail darter's critical habitat. Those who dislike the Endangered Species Act contend this case is an example of how unwieldy and unworkable the act is, how its "inflexibility" can hold up "progress." Those favoring the act and the way in which it has worked over the last 5 years use this same example claiming that out of some 4,500 consultations which occurred between agencies as a result of the act's provisions that this is the single example of where a compromise could not be reached. They argue this is insufficient reason to weaken the act.

I feel that this celebrated case and others which have attracted public attention because certain species complicated their development do not really make the best case for either side in this debate. What is really in question here today is the day-to-day working of the act and the stories behind the 4,500 endangered species consultations which have taken place since enactment of the legislation.

I do not think our concentration upon the end result of the act, insofar as whether or not consultations were successful, adequately addresses the questions which have been raised about the act. What I sense is that there is a frustration abroad in the "development community" because of what they sense is an "environmental tilt" at work today. The reauthorization of the Endangered Species Act has become the focal point of their frustration which is more broad-based than this, the centerpiece, of environmental legislation.

The concerns which have been expressed to me have less to do with the Endangered Species Act than they do with how it, in conjunction with other environmental legislation and regulations, has opened up an incredibly complex array of environmental hurdles which must be cleared in order for development plans to advance. This act, the snail darter and Furbish's lousewort have become the symbols of frustration with environmental regulation.

The roots of this frustration are easy enough to see. Environmental laws dictate that concern for environmental impacts be taken into account in developing any project utilizing Federal funds or conceivably violating environmental standards. This has come to be accepted as a matter of course. However, the frustration comes about when after making what they perceive as "good faith" efforts to comply with the law, those same laws and regulations can be used further with the threat of environmentally-based litigation to block or stymy developments which for other than environmental reasons may be perceived as objectionable. This is regarded as harassment by those seeking to initiate developments.

In this context, fulfillment of all Federal and State requirements is not enough today. If environmental litigation is to be avoided, a development entity must also be accountable to a host of environmental groups who review environmental statements in the public interest.

An organization attempting to build a coal-fired electric generation plant to meet increasing consumer demands can believe it is acting in the public interest in seeking to build that type of plant instead of a nuclear one and by not relying upon petroleum as a fuel. But in attempting to do so they are confronted with arguments that the coal should not be mined because it disrupts land-based ecosystems, it should not be burned because it degrades air quality, it should not consume water because it depletes streams which adversely affects aquatic ecosystems and stream-bank habitat, and that it should not adversely affect wetlands. They are also reminded that if the plant is to be erected in an area where an endangered species might be affected that endangered species consultations are required.

If after attempting to answer all of those questions and explain the trade offs involved they are still threatened with environmental litigation because someone believes they have not adequately addressed these issues they feel frustrated. If what they were doing was simply an engineering exercise they might relish the challenge of how to meet all of these requirements, but this is not the case. They are attempting to meet customer demands and in the process of answering all of these concerns the price-tag of the planned project is increasing and will be passed-on to the consumer. In the final analysis what they are asking is: If we cannot use nuclear energy because of safety questions and cannot use petroleum because of national policy and the technology is not available for use of solar, wind and geothermal energy, how are we to meet increasingly critical demands for energy? This is the context in which the wisdom of the Endangered Species Act is questioned. This is really the bottom line of the debate confronting us.

This view is perhaps best illustrated by a letter I recently received from the Basin Electric Power Cooperative which did not address itself to the act per se, but does express the frustration which is being felt:

> It has always been the position of Basin Electric that we should try to accommodate all legitimate environmental concerns. However, the law enables the (National Wildlife) Federation to raise endless questions about maters already covered in the environmental studies, to raise questions not necessarily related to the environmental acceptability of the project, to associate the whooping crane with projects having little or no relationship to this species, and to file lawsuits to delay meritorious projects. We need relief from this harrassment or we cannot fulfill our responsibilities to our consumers (over one million people living in rural South Dakota, North Dakota, Montana, and Wyoming and parts of four other states).

I do not think it was the intent of Congress that in passing the Endangered Species Act in 1973 that we wanted no development to take place in the Mississippi and Central Flyways encompassing the entire Missouri River Basin because the whooping crane is annually sited in the area. We did not intend to prevent development in the Northwest because it is the range of the grizzly bear. We did not intend to make prairie dog towns inviolate because a black-ferret would make a prairie dog town its home. Yet, every time a project is proposed which admittedly could affect these endangered species an extreme case is made and litigation threatened on the assumption the whooping crane will have no room to land, the grizzly bear no room to roam and the black-footed ferret no place to call home. The intent of environmental law is that these species and their habitats be taken into account and that regionally the cumulative impact on them be taken into account if a large area is their habitat, and that their critical habitat not be ruined if it is site-specific. If that is the requirement of the law and it has been met, then that should be the end of it, but too often it is not.

I think this is the reason relief is being sought from the Endangered Species Act and others.

Our action here today cannot address itself to the full spectrum and nature of this frustration as expressed by the development community, but it can relieve some of their anxieties. We can reaffirm our commitment to clean air, clean water, and protection of endangered species, yet at the same time affirm that we are not advocating no growth because of these concerns. Rather, we are committed to the best possible environment in which man and animal can coexist while providing for the needs of man.

[From the Congressional Record, July 19, 1978]

SENATE CONSIDERATION AND PASSAGE OF S. 2899, WITH AMENDMENTS (Continued)

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. CULVER. Madam President, what is the pending business?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will not resume consideration of S. 2899, which the clerk will state.

The legislative clerk read as follows:

A bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that act should be granted for such actions.

The Senate resumed the consideration of the bill.

The ACTING PRESIDENT pro tempore. The time for debate on this bill is under control. Who yields time?

Mr. CULVER. Madam President, I yield such time as may be desired to the distinguished Senator from California.

The ACTING PRESIDENT pro tempore. The Senator from Iowa has 8 minutes remaining.

Mr. CULVER. Madam President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. CULVER. It is my understanding that the distinguished Senator from California, who has just been recognized, has an amendment pending at the desk. I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. Will the Senator from California please send his amendment to the desk?

AMENDMENT NO. 1423

(Purpose: To provide for cooperative agreements with respect to plants)

Mr. HAYAKAWA. Madam President, I submit an amendment and ask for its consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from California (Mr. Hayakawa) proposes an unprinted amendment numbered 1423:

At the end of the bill add the following new section:

SEC. 6. (a) Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) is amended—

(1) by inserting "(i)" after "(c)";

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E) respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii) respectively;

(4) by striking out "subsection" in the matter preceding subparagraph (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph" in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (i) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

"(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program.

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species".

(b) Paragraph (16) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (formerly paragraph (13) and redesignated paragraph (16) by section 2 of this Act) is amended by striking out "fish or wildlife" and inserting in lieu thereof "fish, wildlife, or plant".

Mr. HAYAKAWA. Madam President, I propose an amendment dealing only with section 6 of the Endangered Species Act of 1973.

This amendment would allow the Secretary of the Interior to enter into cooperative agreements with the States for the management, conservation and protection of endangered and threatened species of plants.

The amendment simply corrects an oversight in the Endangered Species Act of 1973. Under section 6 of this act, the Secretary of the Interior is authorized to enter into a cooperative agreement to provide Federal financial assistance to any State which establishes and maintains an adequate and active program for the management, conservation, protection, and restoration of endangered and threatened species. The Department of the Interior has interpreted the langauge in this act to apply only to fish and wildlife, and not to plants. My amendment would correct this oversight, by adding a new subsection 2 under section 6(c) of this act, so that the Secretary of the Interior may also enter into cooperative agreements with States for plant programs. This would provide Federal financial assistance to States for the development of programs for the protection of endangered and threatened species of plants.

Under this new subsection 6(c)(2), in order for a State agency to qualify for a cooperative agreement, the State agency responsible for the management of the plant programs would not need to have the powers to acquire land or aquatic habitat or interests therein. This authority to acquire habitat is required for the State agency responsible for the administration of fish or wildlife programs. The reason for this difference is that in some States, the authority for the protection of endangered and threatened plants rests with a different State agency than the agency responsible for the protection of fish or wildlife. In some cases, we would be offering the States money for the protection of endangered and threatened plants, and at the same time we would be making it impossible for the States to qualify for these funds.

In order to qualify for a cooperative agreement for plants under this amendment, the States would not have to comply with subsection 6(C)(4) of the original act pertaining to the State agency's authority to acquire land. Yet 6(C)(1) of the original act says that the authority must reside in the State agency to conserve resident endangered species in order to qualify for a cooperative agreement.

The word "conserve" is defined in the act as having the power to use all methods and procedures which are necessary to protect endangered or threatened species, which includes habitat acquisition and maintenance. By deleting subsection 4 under section 6(C) of the original act, in drafting a new subsection 6(C)(2), it is my intention to eliminate this problem of the power of acquition for the State agency, a problem that would probably come up quite frequently without this exception. Under section 6(C)(2) which establishes cooperative agreements for plants, it is my intention that the term "conserve" shall not have to include the power to acquire land or aquatic habitat by the State agency in the development and protection of endangered and threatened species of plants under cooperative agreement.

Madam President, I would like to make it very clear that this amendment is in no way intended to bring plants under section 7 of the Endangered Species Act of 1973. The amendment that I am offering is intended to bring money into the States in order to aid them in developing their endangered and threatened plant programs. The purposes is to help and encourage States with these programs, and not to discourage them.

Let me make it clear that the cooperative agreements language for plants is intended to have a great deal of discretion up to the individual States in developing their endangered and threatened plant programs. This language is not intended to provide an incursion by the Federal Government into these programs. It is my intention in offering this amendment that the States have a great deal of choice and flexibility in developing and conducting programs for endangered and threatened plants, and for entering into cooperative agreements for these plant programs in order to qualify for Federal funds under section 6(c) of the act.

Madam President, I would like to state for the record that my staff has attempted to work out language that is consistent with the goals of the majority and minority members of the Senate Committee on Environment and Public Works, and with the goals of the Department of the Interior. Although we have not had enough time to run this proposal through the proper channels at the Department of the Interior and at the Office of Management and Budget for official approval, this amendment does have the tacit approval of the Department of the Interior; it is consistent with testimony made by official representatives of that agency before congressional committee hearings on the Endangered Species Act.

I have also received the official support of the California Native Plant Society for this amendment, and would like to give special thanks to Alice Howard, who is their chairman of the rare plant committee. In addition I would like to thank Mr. Lloyd Bell, the commissioner of public lands of the Development of Natural Resources of the State of Washington for his hard work on this amendment.

I thank the Chair.

Mr. CULVER. Madam President. I wish to express the appreciation of the Environment and Public Works Committee to the distinguished Senator from California for raising this issue.

I think he is to be commended for bringing to the attention of the Congress and, specifically, for consideration on this reauthorization, what I think was very likely an oversight at the time of the original enactment of this legislation in 1973.

Several States, as the Senator has noted, are carrying out very successful and progressive programs to protect endangered plant species and the Federal money to support them should not be restricted just to animal life.

So I certainly have no objection to the amendment.

It is my understanding that the distinguished ranking minority member of the subcommittee, Mr. Wallop, may well have some questions for clarification of the legislative history. I yield to him at this time for that purpose.

Mr. WALLOP. I thank the Senator from Iowa. I echo his statements as to the value of the amendment from the Senator from California.

In the past, assurances have been given on behalf of amendments which were not interpreted as such. So I thought it was necessary, and I beg the Senator's indulgence, because I think the Senator has carefully covered each of the points here in his presentation, that we review several points to clearly state the Senator's intent.

First of all, I understood the Senator from California to say that in his inclusion of plants into section 6 and the use of the word "conserve," that it was not his intent to use the entire definition as it appears in the act with regard to the provisions, that it would include the necessity to acquire land.

Mr. HAYAKAWA. The Senator from Wyoming is quite correct.

Mr. WALLOP. Also, that the States involved would have to ask for this authority, and that it could not be laid on them.

Mr. HAYAKAWA. That is correct. It does not interfere with the States.

Mr. WALLOP. And I think the Senator was quite clear in his speech that his amendment did nothing to enhance the Federal authority to regulate plants, either in section 7 or the prohibition section.

Mr. HAYAKAWA. That is correct.

Mr. WALLOP. Third, the present law, in combination with this amendment, would allow States to apply for funds under section 6 for only those plants they wish to manage.

Mr. HAYAKAWA. That indication is quite clearly stated by the amendment.

Mr. WALLOP. I think it is, too, and I beg the Senator's indulgence. But I do think that sometimes it is necessary to get the attention of the bureaucracy.

Mr. HAYAKAWA. I thank the Senator from Wyoming for helping us stress these particular points.

Mr. WALLOP. Madam President, that clears it up and should provide sufficient legislative history to enhance the Senator's amendment.

I compliment him and congratulate him again on it.

I yield back my time.

Mr. CULVER. Madam President, I yield back my time and ask for a vote on the amendment.

The ACTING PRESIDENT pro tempore. Does the Senator from California yield back his time?

Mr. HAYAKAWA. I yield back my time.

The ACTING PRESIDENT pro tempore. All time has been yielded back. The question is on agreeing to UP amendment No. 1423 of the Senator from California.

The amendment was agreed to.

AMENDMENT NO. 3255

(Purpose: To place the National Oceanic and Atmospheric Administration on the Endangered Species Committee, in lieu of the Smithsonian Institution)

Mr. HOLLINGS. Madam President, I call up my amendment and ask that it be stated.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina (Mr. Hollings) proposes an unprinted amendment numbered 1423:

On page 4, lines 9 through 11, strike out all following "Interior" but before the period.

On page 4, line 12, striking out all following "(F)" and insert in lieu thereof the following: "The Administrator of the National Oceanic and Atmospheric Administration.".

On page 10, lines 21 through 23, strike out all following "where appropriate" and before "shall prepare", and insert in lieu thereof the following: "the Administrator of the National Oceanic and Atmospheric Administration)".

Mr. HOLLINGS. Madam President, this amendment is supported by the leadership of the Committee on Commerce, Science, and Transportation—Howard W. Cannon, chairman, and James B. Pearson, the ranking minority member—as well as Warren Magnuson and Ted Stevens. It is also my understanding that the amendment is acceptable to the authors of the Culver-Baker compromise.

The purpose of the amendment is to place the National Oceanic and Atmospheric Administration on the interagency Endangered Species Committee, in lieu of the Smithsonian Institution. The National Oceanic and Atmospheric Administration (NOAA) carries out responsibilities under the Endangered Species Act presently, and there is strong feeling among the membership of the Commerce Committee that as such, NOAA should be a full member of the interagency committee. In addition, NOAA has knowledge and experience that would be useful to this committee.

On the other hand, the Smithsonian Institution, truly a venerable one, is in a quite unique position within the Federal Government. As established, it is part of the Federal establishment, but is not really a Federal agency, per se. It has, for example, no rulemaking or regulatory authority to speak of. Furthermore, there is an even deeper policy question here concerning the role of the Smithsonian, one that I understand my friend, Senator Jackson, is concerned about, as well as those of us cosponsoring this amendment. We all have grave doubts as to whether it is either appropriate or wise for the Smithsonian to embark on this task. Both legally and from a policy point of view, it would be quite a departure from the current responsibilities of the Smithsonian. Because of this, I understand that Senator Jackson, as a regent of the Smithsonian, is in support of this amendment.

I have also looked carefully at the balance in the membership that the Culver-Baker compromise seeks to achieve in the interagency committee. I am convinced that by placing NOAA on the committee in lieu of the Smithsonian, this balance would not be harmed. And I understand that the authors of the Culver-Baker compromise have no objections to it either.

I believe, then, that this amendment will solve several problems, one being the uncomfortable position that the Smithsonian finds itself in, and the other being an appropriate role of NOAA as an agency with endangered species responsibilities. I urge my colleagues to support this effort.

Madam President, the makeup of the seven-man committee does not include the Secretary of Commerce in a direct fashion only in an ancillary way. Section (e) of the present wording of the proposed bill reads:

> And where appropriate, the Secretary of the Interior. in concurrence with the Secretary of Commerce.

It will be noted that in the Endangered Species Act as it was passed in 1973, section 1532(10) reads:

The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Number 4 of 1970.

In other words, the Commerce Department, through its administrator, was given a fundamental and basic responsibility under the Endangered Species Act.

Under section 1542, the Commerce Department was given a special authorization to carry out its duties. In the ensuing years, it has corralled the expertise and the staff to administer properly its responsibilities under the act.

At the present time, there are numerous endangered species being administered by the Commerce Department, such as the following categories: whales; blue whale, bowhead, finback, gray, humpback, right whale, sei whale, sperm whale; turtles: hawksbill, leatherback, Atlantic ridley; fish; shortnosed sturgeon; seals: Hawaiian monk seal.

In other words, here was an agency with a fundamental responsibility; and it is interesting that the Secretary of Agriculture and the Army and others were included, but this agency was not. I am glad the managers of the bill now have gone along with this oversight, so that we can include the Department of Commerce, through the administrator of the National Oceanic and Atmospheric Administration.

It was the desire of the managers of the bill that balance be maintained, and the suggestion was made that the secretary of the Smithsonian Institution be supplanted here by the administrator of NOAA. I have no particular feeling about this. I understand, of course, that the Smithsonian Institution is a Federal agency, but it has no regulatory or rule-making powers.

The Senator from Washington (Mr. Jackson) who is a cosponsor of the amendment, pointed out the desire of the members of the advisory committee and others at the Smithsonian Institution that they not be included in this committee. Therefore, the balance is maintained by the replacement of the secretary of the Smithsonian Institution by the administrator of NOAA.

Mr. WALLOP. Madam President, it is my understanding that the Senator from Iowa (Mr. Culver) and the majority members have agreed to this amendment. We on the minority side agree to it as well.

The Senator has found a problem that we in the committee had not anticipated with respect to the Constitution of the United States—the inclusion of the Director of the Smithsonian Institution.

I must say that the Smithsonian was reluctant to become involved in it, for reasons other than constitutional ones, but that reluctance apparently has been served by this amendment.

I think the inclusion of NOAA is an adequate substitute for what the subcommittee tried to do.

I see no problems with this amendment. I compliment the Senator for bringing the constitutional question to our attention.

Mr. ROBERT C. BYRD. Madam President, will the Senator yield?

Mr. WALLOP. I yield.

Mr. ROBERT C. BYRD. On behalf of Mr. Culver, I accept the amendment and compliment the distinguished Senator from South Carolina for his foresight and effort in bringing forth this amendment.

Mr. HOLLINGS. I thank the Senator from Iowa, the Senator from Wyoming, and the majority leader for their cooperation in this regard, and I ask for the adoption of the amendment.

Mr. ROBERT C. BYRD. Madam President, I yield back the remainder of the time on this side.

Mr. HOLLINGS. I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3238

(Purpose: To rewrite and improve the Endangered Species Act)

Mr. GARN. Madam President, I call up at this time my amendment No. 3238.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Utah (Mr. Garn) proposes an amendment numbered 3238.

Mr. GARN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 1 strike all after the enacting clause, and insert in lieu thereof the following:

That this Act may be cited as the "Endangered Species Act Amendments of 1978".

SEC. 2. The Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is amended by striking section 2 and all subsequent sections and inserting the following:

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE AND POLICY

"SEC. 2. The Congress finds and declares that—

"(a) (1) various species of wildlife and plants in the United States have been rendered extinct as a consequence of inadequate concern and conservation:

"(2) other species of wildlife and plants have been so depleted in number that they are in danger of or threatened with extinction;

"(3) these species of wildlife and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

"(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of wildlife and plants facing extinction, pursuant to—

"(A) migratory bird treaties with Canada and Mexico;

"(B) the Migratory and Endangered Bird Treaty with Japan;

"(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

"(D) the International Convention for the Northwest Atlantic Fisheries;

"(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

"(F) the Convention of International Trade in Endangered Species of Wild Fauna and Flora; and

"(G) other international agreements.

"(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's native flora and fauna.

"(b) The purposes of this chapter are to provide a means whereby the ecosystems upon which species endangered or threatened species by human influence depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

"(c) It is further declared to be the policy of Congress that all Federal departments, agencies and instrumentalities shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act insofar as it is practicable and consistent with the primary purposes of these departments, agencies, and instrumentalities.

"DEFINITIONS

"SEC. 3. For the purposes of this chapter:

"(a) The term 'commmercial activity' means all activities of industry and trade, including but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however*, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.

"(b) The terms 'conserve,' 'conserving,' and 'conservation' mean to use and the use of all methods and procedures which are prudent and reasonable to bring endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, critical habitat acquisition, and managements, propagation, live trapping, transplantation, and regulated taking.

"(c) The term 'Convention' means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 8, 1973, and the appendices thereto.

"(d) The term 'endangered species' means any species which is determined pursuant to the provisions of this Act to be in danger of extinction throughout all or a portion of its range other than a species determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

"(e) The term "critical habitat' means—

"(1) for a threatened or an endangered species, the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (i) essential to the continued existence of the species, and (ii) which require special management considerations or protection;

"(2) when the Secretary so determines, critical habitat for an endangered species can include areas meeting qualifications of paragraph (1) of this subsection into which the species can be expected to expand naturally;

"(3) except in those unusual circumstances determined by the Secretary, critical habitat should not include the entire geographical areas occupied by the species.

"(f) The term 'foreign commerce' includes, among other things, any transaction—

"(1) between persons within one foreign country;

"(2) between persons in two or more foreign countries;

"(3) between a person within the United States and a person in a foreign country, or

"(4) between persons within the United States, where the wildlife in question are moving in any country or countries outside the United States.

"(g) The term 'import' means to land on, bring into, or introduce into; or attempt to land on, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meainng of the customs laws of the United States.

"(h) The term 'person' means an individual, corporation, partnership, trust association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

"(i) The term 'plant' means any species of the plant kingdom, and includes seeds, roots, and other parts thereof.

"(j) The term 'Secretary' means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

"(k) the term 'species' means a group of physically similar organisms capable of interbreeding but generally incapable of producing fertile offspring through breeding with organisms outside this group.

"(l) The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"(m) The term 'State agency' means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of plant or wildlife resources within a State.

"(n) The term 'take' means purposefully to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct which is inimical to the continued existence of an endangered or threatened species. It does not include effects from normal forestry, farming, ranching, or water management practices.

"(o) The term 'threatened species' means any species determined pursuant to the provisions of this Act which is likely to become an endangered species within the foreseeable future throughout all or a portion of the range.

"(p) The term 'United States,' when used in a geographical context, includes all States, possessions, and territories.

"(q) The term 'wildlife' means any species of the animal kingdom not normally domesticated and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

"DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES

"SEC. 4. (a) GENERALLY.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

"(A) the present or threatened destruction or adverse modification of its existing habitat;

"(B) overutilization for commercial, sporting, scientific, or educational purposes;

"(C) disease or predation;

"(D) the inadequacy of existing regulatory mechanisms; or

"(E) other manmade factors affecting its continued existence.

"(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

"(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species; or

(ii) be changed in status from a threatened species to an endangered species;

he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

"(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section; or

(ii) be changed in status from an endangered species to a threatened species;

he shall so inform the Secretary of the Interior who, if he concurs shall implement such action; and

"(C) the Seretary of the Interior may not list or remove from any list any such species, and may not change the status of any species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

"(3) Critical habitat of an endangered or threatened species shall be designated concurrently with determination of that species' status.

"(4) When such determination and designation are made, there shall be an analysis of the effects of such actions on environmental quality and economic development.

"(b) Basis for Determination.—(1) The Secretary shall make determinations and designations required by subsection (a) of this section on the basis of sound scientific and commercial data available to him and after consultation with the affected States, interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which such determinations involve resident species of wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subection (c) of this section, unless the Secretary had first—

"(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

"(B) allowed each such State ninety days after notification to submit its comments, recommendations, and concurrence except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

"(C) published in the Federal Register a summary of all information, comments, and recommendations received by him which relate to such proposed action.

"(2) In determining whether or not any foreign species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection or management of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas, or which substantially revises existing information regarding the subject species.

"(c) Lists.—(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he shall by regulation revise, a list of all species determined by him or the Secretary of Commerce pursuant to this Act to be endangered species and a list of all species determined by him or the Secretary of Commerce pursuant to this Act to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered, or threatened.

"(2) The Secretary shall, upon the petition of an interested person under section 553(E) of title 5, conduct a review of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (j) of this subsection, but only if he makes and publishes a finding and a summary of the evidence which in his judgment warrants such a review.

"(3) Any list in effect on December 27, 1973, of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this chapter, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this chapter. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of title 5.

"(4) No species resident in a foreign nation shall be listed without concurrence of that nation.

"(d) Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1) of this Act, in the case of wildlife, or section 9(a)(2) of this Act, in the case of plants, with respect to endangered species, except that with respect to the taking of resident species wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(a) of his Act only to the extent that such regulations have also been adopted by such State.

"(e) REGULATIONS.—(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of title 5 (relating to rulemaking procedures) shall apply to any regulation promulgated to carry out the purposes of this chapter.

"(2)(A) In the case of any regulation proposed by the Secretary to carry out the purposes of this chapter—

"(i) the Secretary shall publish general notice of the proposed regulation (including the complete test of the regulation) in the Federal Register not less than sixty days before the effective date of the regulation;

"(ii) the Secretary shall offer for publication in appropriate scientific journals the substance of the Federal Register notice referred to in subparagraph (i); and

"(iii) if any person who feels that he may be adversely affected by the proposed regulation files (within sixty days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the Federal Register.

"(B) Neither subparagraphs (A) of this paragraph nor section 553 of title 5 shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

"(i) Any regulation appropriate to carry out the purposes of this chapter which was originally promulgated to carry out the Endangered Species Conservation Act of 1969.

"(ii) Any regulation (including any regulation implementing section 6(g)(2)(B)(ii) of this Act) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of wildlife, the requirements of subsection (b)(1)(A) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the one hundred twenty-day period following the date of publication unless, during such one hundred twenty-day period, the rulemaking procedures which would apply such regulation without regard to this subparagraph are complied with.

"(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a complete and factual analysis by the Secretary of the data on which such regulation is based and shall clearly show the relationship of such data to such regulations.

"LAND ACQUISITION

"SEC. 5. (a) The Secretary of the Interior shall establish and implement a program to conserve (A) native wildlife or plants which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such program, he—

"(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

"(2) is authorized to acquire by purchase, donation, or othewise, lands, waters or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him; and

"(3) is authorized to compensate persons for financial loss when he determines that such persons have suffered financial losses directly caused by the requirements of this Act or of regulations promulgated by the Secretary pursuant to authority provided by this Act, either of which create conditions whereby a person must manage lands owned by him in a maner which eliminates financial gain which would otherwise accrue if such land were managed in the absence of requirements to conserve animals or plants which are listed as endangered species or threatened species pursuant to section 4 of this Act.

"(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, of interests therein under subsection (a) of this section.

"(c) (1) Any person who seeks compensation under this section shall apply therefore in such a manner and form as the Secretary shall by regulation prescribe.

"(2) The Secretary shall not take any action with respect to any application made under paragraph (1) unless the applicant submits to the Secretary such evidence as the Secretary may require which substantiates the claim that the loss was caused by the implementation of this Act or regulations promulgated thereunder.

"(3) No compensation for any loss shall be made under this section until the Secretary, after conducting an appropriate investigation, is satisfied that the facts submitted by the applicant therefore are accurate and substantiate the loss as having been caused by implementation of this Act or regulations promulgated thereunder.

"(4) Compensation shall not be paid under this section for any loss unless application for such compensation is made before December 31, 1978, or before the close of one year after the date regulations are promulgated by the Secretary under this Act which affect the management of a persons's land.

"(5) The amount of the compensation paid to any person under this section shall be equal to the economic gain foregone due to requirements to manage that person's lands to conserve endangered species or threatened species listed pursuant to section 4 of this Act.

"(6) The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

"(7) Until September 30, 1979, there are authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of this section.

"COOPERATION WITH STATES

"SEC. 6. (a) GENERALLY.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States and private property owners concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species of threatened species.

"(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species of threatened species listed pursuant to this Act. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s).

"(c) COOPERATIVE AGREEMENTS.—In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species listed pursuant to this Act. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed and adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(1) authority resides in the State agency to conserve resident species determined by the State agency or the Secretary to be endangered or threatened pursuant to this Act;

"(2) the State agency has established conservation programs, consistent with the purposes and policies of this Act, for some or all resident species of wildlife in the State which are determined to be endangered or threatened pursuant to this Act and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(3) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of wildlife listed pursuant to this Act; and

"(4) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species.

"(d) (1) ALLOCATION OF FUNDS.—The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

"(A) the international commitments of the United States to protect endangered species or threatened species;

"(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

"(C) the number of endangered species and threatened species listed pursuant to this Act within a State;

"(D) the desirability and reasonable expectation of restoring endangered species and threatened species within a State; and

"(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

"(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered species; (C) specific anticipated economic impacts of these actions; (D) the estimated expenditures required to accomplish these actions; and (E) the share of such expenditures to be borne by the Federal Government and by the States; except that—

"(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program expenditures stated in the agreement; and

"(ii) the Federal share may be increased to 75 per centum whenever two or more States have a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

"(e) REVIEW OF STATE PROGRAMS.—Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

"(f) CONFLICTS BETWEEN FEDERAL AND STATE LAWS.—Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effective (1) permit what is prohibited by this Act or by any regulation which implements this Act, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this Act or in any regulation which implements this Act. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this Act or in any regulation which implements this Act but not less restrictive than the prohibitions so defined.

"(g) TRANSITION.—The prohibitions set forth in or authorized pursuant to sections 4(d) and 9(a)(1)(B) of this Act shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

"(1) which is then a party to a cooperative agreement with the Secretary pursuant to subsection (c) of this section (except to the extent that the taking of any such species is contrary to the law of such State); or

"(2) except for any time within the establishment period when—

"(A) The Secretary applies such prohibition to such species at the request of the State, or

"(B) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of title 5 or any other provision of this Act; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

"(h) REGULATIONS.—The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

"(i) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, September 30, 1981, not to exceed $10,000,000.

"INTERAGENCY COOPERATION

"SEC. 7. The Secretary shall review other programs administered by him, and when appropriate, utilize such programs in furtherance of the purposes of this Act. All other Federal departments, agencies, and instrumentalities shall consult with the Secretary, and shall utilize their authorities insofar as practicable and consistent with their primary purposes, in furtherance of the purposes of this Act, by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. *Provided, however*, That those departments, agencies, and instrumentalities with in-house wildlife expertise need consult only as they desire or upon published request to do so by the Secretary. When authorizing, funding, or carrying out major Federal actions, such departments, agencies, and instrumentalities shall adopt measures to avoid significant, direct adverse effects of such major Federal actions on the conservation of endangered species or threatened species or on their critical habitat. No action taken after complying with this section shall be deemed a taking as defined by this Act.

"INTERNATIONAL COOPERATION

"SEC. 8. (a) FINAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 724 of title 31, use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President may provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference of funds appropriated under other authority of this Act.

"(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

"(1) foreign countries to provide for the conservation of wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

"(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

"(3) foreign persons who directly or indirectly take wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such wildlife and their habitat.

"(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

"(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of wildlife; and

"(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in wildlife, or plant management, research, and law enforcement and to render professional assistance abroad in such matters.

"(d) INVESTIGATION.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

"(e) CONVENTION IMPLEMENTATION.—The President is authorized to designate appropriate agencies to act as the Management Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention. The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

"PROHIBITED ACTS

"SEC. 9. (a) GENERAL.—(I) Except as provided in sections 6(g), 7, and 10 of this Act, with respect to any endangered species wildlife listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

"(A) import any such species into, except any such species from the United States;

"(B) take any such species within the United States or the territorial sea of the United States;

"(C) take any such species upon the high seas;

"(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

"(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

"(F) sell or offer for sale in interstate or foreign commerce any such species; or

"(G) violate any regulation pertaining to such species or to any threatened species wildlife listed pursuant to section 4 of this Act and promulgate by the Secretary pursuant to authority provided by this chapter.

"(2) Except as provided in sections 6(g), 7, and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

"(A) import any such species into, or export any such species from, the United States;

"(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

"(C) sell or offer for sale in interstate or foreign commerce any such species; or

"(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgate by the Secretary pursuant to authority provided by this Act.

"(3) However, no action undertaken after compliance with section 7 shall be deemed to be a taking as defined by this Act.

"(b) Species Held in Capitivity or Controlled Environment.—The provisions of this section shall not apply to any wildlife in captivity or in a controlled environment on December 28, 1973, if the purposes of such holdings are not contrary to the purposes of this Act; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity.

"(c) Violation of Convention.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof except that possession of specimens or species parts acquired before ratification of the Convention is not prohibited.

"(2) Any importation into the United States of wildlife shall, if—

"(A) such wildlife is not any endangered species listed pursuant to section 4 of this Act but is listed on appendix II to the Convention.

"(B) the taking and exportation of such wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

"(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

"(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

"(d) Imports and Exports.—(1) It is unlawful for any person to engage in business as an importer or exporter of wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) of plants without first having obtained permission from the Secretary.

"(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

"(A) keep such records as will fully and correctly disclose each importation or exportation of wildlife or plants made by him and the subsequent disposition made by him with respect to such wildlife or plants;

"(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, and opportunity to examine his inventory of imported wildlife or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

"(C) file such reports as the Secretary may require.

"(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

"(e) Reports.—It is unlawful for any person importing or exporting wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of the Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

"(f) Designation of Ports.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of wildlife or plants, or for other reasons, if in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

"(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)) shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

"(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

"EXCEPTIONS

SEC. 10. (a) PERMITS.—The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 9 of this Act for scientific purposes or to enhance the propagation or survival of the affected species.

"(b) HARDSHIP EXEMPTIONS.—(1) If any person enters into a contract with respect to a species of wildlife or plant before the date of publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as endangered species pursuant to section 4 of this Act will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section (a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

"(2) As used in this subsection, the term 'undue economic hardship' shall include, but not be limited to—

"(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species:

"(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

"(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

"(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

"(c) NOTICE AND REVIEW.—The Secretary shall publish notice in the Federal Register of each application for an exception or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered species is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

"(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the unnecessary disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

"(e) ALASKAN NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

"(A) any Indian, Aleut. or Eskimo who is an Alaskan Native who resides in Alaska; or

"(B) any nonnative permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Nonedible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any nonnative resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

"(2) Any taking under this subsection may not be accompanied in a wasteful manner.

"(3) As used in this subsection—

"(A) the term 'subsistence' includes selling any edible portion of wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

"(B) the term 'authentic native articles of handicrafts and clothing' means items composed wholly or in some significance respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacking, beading, drawing, and painting.

"(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan Native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.

"(f) PRE-ACT ENDANGERED SPECIES PARTS EXEMPTION; APPLICATION AND CERTIFICATION; REGULATORY; VALIDITY OF SALES CONTRACT; SEPARABILITY OF PROVISION. (1) As used in this subsection—

"(A) The term 'pre-Act' endangered species part' means—

"(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(ii) any finished scrimshaw product, if such products or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

"(iii) any finished product, of plant or animal origin, if the raw material for such product was lawfully held within the United States on December 28, 1973; or on the date the source species was listed as endangered pursuant to this Act.

"(B) the term 'scrimshaw product' means any form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

"(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

"(A) The prohibition on export from the United States set forth in section 9(a)(1)(A) of this Act.

"(B) Any prohibition set forth in section 9(a)(1)(E) or (F) of this Act.

"(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

"(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out the subsection first take effect;

"(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

"(B) contains a complete and detailed inventory of all pre-Act endangered species part or products claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

"(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

"(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

"(A) any prohibition in section 9 of this Act which is exempted;

"(B) the pre-Act endangered species parts to which the exemption applies;

"(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate; and

"(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

"(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

"(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

"(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this chapter. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

"(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of the subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

"(B) In the event that this paragraph is held invalid, the validity of the remainder of this Act, including the remainder of this subsection, shall not be affected.

"(7) Nothing in this subsection shall be construed to—

"(A) exonerate any person from any act committed in violation of paragraph (1)(A), (1)(E), or (1)(F) of section 9 prior to the date of enactment of this subsection; or

"(B) immunize any person from prosecution for any such act.

"PENALTIES AND ENFORCEMENT

"Sec. 11. (a) Civil Penalties.—(1) Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1), (A), (B), (C), (D), (E), or (F); (a)(2), (A), (B), or (C); (c); (d) (other than a regulation relating to recordkeeping or filing of reports); (f); or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise knowingly violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole. The penalty for persons who unknowingly violate any provision of this Act shall be forfeiture of species.

"(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subection shall be conducted in accordance with section 554 of title 5. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon the person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business when application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b) CRIMINAL VIOLATIONS.—(1) Any person who willfully and knowingly commits an act which violates any provision of this Act, or any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1) (A), (B), (C), (D), (E), or (F); (a)(2) (A), (B), or (C); (c); (d) (other than a regulation relating to recordkeeping, or filing of reports); (f); or (g) of section 9 of this Act shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who willfully and knowingly commits an act which violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months or both.

"(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement, directly related or connected with the specific violation for which conviction was obtained. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

"(c) DISTRICT COURT JURISDICTION.—The several district courts of the United States, including the courts enumerated in section 460 of title 28 shall have jurisdiction over any actions arising under this Act. For the purpose of this Act. American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

"(d) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

"(e) ENFORCEMENT.—(1) The provisions of this Act and any regulations of permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

"(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

"(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this Act, as the Secretary may by regulation prescribe.

"(4)(A) All wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

"(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b)(1) of this section.

"(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

"(f) REGULATIONS.—The Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act, including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

"(g) CITIZEN SUIT.—(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

"(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

"(B) to compel the Secretary to apply, pursuant to section 6(g) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

"(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

"(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

"(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of the section; or

"(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

"(B) No action may be commenced under subparagraph (1)(B) of this section—

"(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

"(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B) of this Act to determine whether any such emergency exists.

"(3)(A) Any suit under this subsection shall be brought in the judicial district in which the violation occurs.

"(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

"(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing party, whenever the court determines such award is appropriate, providing that the party to whom award is to be made has petitioned the Court for such relief prior to issuance of any final order.

"(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

"(h) COORDINATION WITH OTHER LAWS.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of the Act with the administration of the animal quarantine laws (sections 101 to 105, 111 to 135b, and 612 to 614 of title 21) and section 1306 of title 19. Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibit or restrict importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 1527 of title 19, relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

"ENDANGERED PLANTS

"Sec. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress.

"CONFORMING AMENDMENTS

"Sec. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: 'With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system.'

"(b) Subsection 10(a) of the Migratory Bird Conservation Act (15 Stat. 1224; 16 U.S.C. 7151(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715s(a)), are each amended by striking out 'threatened with extinction,' and inserting in lieu thereof the following: 'listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,'.

"(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

" 'Threatened Species.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction,' and inserting in lieu thereof the following:

" 'Endangered Species and Threatened Species.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants.'

"(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k–1), is amended to read as follows:

" 'The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

" '(1) incidental fish and wildlife-oriented recreational development,

" '(2) the protection of natural resources,

" '(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

" '(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) if this section, and are adjacent to, or within the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps.'

"(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

"(1) by striking out 'Endangered Species Conservation Act of 1969' in section 3(1)(B) thereof and inserting in lieu thereof the following: 'Endangered Species Act of 1973';

"(2) by striking out 'pursuant to the Endangered Species Conservation Act of 1969' in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: 'or threatened species pursuant to the Endangered Species Act of 1973';

"(3) by striking out 'endangered under the Endangered Species Conservation Act of 1969' in section 102(b)(3) thereof and inserting in lieu thereof the following; 'an endangered species or threatened species pursuant to the Endangered Species Act of 1973'; and

"(4) by striking out 'of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,' in section 202(a)(6) thereof and inserting in lieu thereof the following: 'such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973.'.

"(f) Section 2(1) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) is amended by striking out the words 'by the Secretary of the Interior under Public Law 91-135' and inserting in lieu thereof the words 'or threatened by the Secretary pursuant to the Endangered Species Act of 1973.'

"REPEALER

"SEC. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa-688cc-6), is repealed.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in sections 5 and 6 of this Act, there is authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1979, not to exceed a total of $25,000,000 for the fiscal year ending September 30, 1980, and the fiscal year ending September 30, 1981, to enable the Department of Interior to carry out such functions and responsibilities as it may have been given under this chapter; and

"(2) not to exceed $2,500,000 for the fiscal year ending September 30, 1979, and not to exceed a total of $3,000,000 for the fiscal year ending September 30, 1980, and the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this chapter.

"MARINE MAMMAL PROTECTION ACT OF 1972

"SEC. 16. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

"SEC. 17. This Act shall take effect on the date of its enactment.".

Mr. GARN. Mr. President, the legislation before us, the Endangered Species Act Amendments of 1978, raises the deepest of philosophical questions. It challenges us to find the niche which man should occupy in the overall scheme of things, and to balance his constructive and destructive abilities. To a great extent, it is our success as society that enables us to consider these questions. Never before has any society had the material abundance, and the leisure time, to put such questions to itself. All of man's past history is taken up with the struggle to feed and clothe himself, to protect himself against the power of natural forces, against encroachments by wild plants and animals, and against neighbors who might be bigger, stronger, or more warlike than he.

Having now reached a plateau where material wants are to a great extent satisfied, the American society has paused, looked about it, and asked itself if what it has created is desirable, or permanent. The questions are real ones, and they deserve full consideration, in all their implications. It will not do to say, simply: "We can go on as we have done," or "We must return to a simpler time." The first answer means, in the long run, the exhaustion of physical resources, and perhaps the moral exhaustion of our people. The second answer will consign millions of people to death and physical misery. The fact is that we are able to support today's population only by the use of technological development, and intensive use of resources. "Small is beautiful" sounds good, but it is really economics as if only some people mattered.

Science teaches us that everything in the physical world tends toward stasis, toward the elimination of differences. Ultimately, then, all species will be endangered, and will one by one, go out of existence.

In that sense, the attempt to preserve every species is fruitless. It cannot be done. But that is in the long run. I am reminded of the woman who was listening to an astronomer explain that in a billion years or so, the Sun would burn out. "Oh, no!" she cried. "What's the matter?" asked the scientist, "you would not be here in a billion years." "Oh, a billion. I thought you said a million."

In the meantime, there is a great deal we can and should do, to preserve diversity. It was in that spirit that Congress, first in 1969, and then in 1973, passed legislation to provide attention and protection to species whose continued existence was in jeopardy. Unfortunately, as a society, and as a Congress, we have competing responsibilities. Beyond the need to protect the environment, we are also responsible for the provision and preservation of aspects of our society which are judged desirable by the American people. These include food and water, electricity and other forms of power, and the materials we use to make everything from hospital beds to golden spittoons for Las Vegas casinos.

Some of the uses to which we put our physical wealth are honorable and noble; others are certainly not that useful. But it is the essence of a free society that individuals are left to make the judgment for themselves.

The legislation of 1973, which we are seeking to amend today, was passed by the overwhelming margin characteristic of environmental legislation in the first flush of the movement, in the late 1960's and early 1970's. As I recall, the vote was 92 to 0; 5 years later, we have had some time to see what developed from that bill, and to analyze what we have done. Obviously, were the bill to come before us today, it would not command the same majority. That is not to say that it would not pass, or that it should not. But certainly there would be more questioning of it than there was in 1973. And that is to the good. If we do not learn from our experience, we are more foolish even than we look in some of the Herblock cartoons.

It has been said that the 1973 act is working well, and needs no adjustment. After all, there have been 4,500 "consultations" over potential conflicts, and only one, the Tellico Dam, has reached the courts. Is that not a record to be proud of? It is, of course, but there are contributing factors that may need a little attention.

To begin with, some of the 4,500 consultations involved no more than a phone call. We need to recognize that the Fish and Wildlife Service expects as many as 20,000 consultations in fiscal year 1979, a fivefold increase.

Second, we are only at the beginning of our experience with the Endangered Species Act. Over 1,800 plant species and 100 animal species have now been proposed for designation as endangered or threatened; more than 40 different habitats are being considered for designation as critical. And I point out to the Senate that some of these "habitats" are of enormous size. The entire Colorado River drainage is the critical habitat for the bonytail chub, an endangered species. Senator McClure has already brought to the attention of the Senate the problems coming with the designation of the habitat of the grizzly bear, and the extension of that habitat into areas formerly, but no longer, occupied by the bear.

The Committee on Environment and Public Works took testimony from scientists who testified that the endangered species legislation could be used to stop any Federal construction project if someone so desired. All that would be required is a little time, a few dedicated workers, and the act as it now stands interpreted. A team of investigators would be able to find a species, perhaps previously unknown, whose existence would, under the Supreme Court's interpretation, be stopped.

Third, there is some evidence that the Office of Endangered Species has delayed listing certain species as endangered where they might interfere with a Federal project, for fear of congressional reprisals on this legislation now before us. The committee report on the bill makes precisely this point. And the Secretary of the Interior has been quoted as admitting that:

> With the endangered species list there is no question that it is being used in some instances to bring a halt to a project. The problem is not with the endangered species but with the people and the project involved. That is an instrument by which they use to bring the projects to a halt.

Fourth, the Interior Department is in some cases listing a species as endangered, but it is not designating the habitat as critical. The Colorado squawfish, for example, has been designated as endangered, but its habitat, which is the entire Colorado River basin, has not been designated as "critical." The reason, I suspect, is that such a designation would provoke a political confrontation that the species would lose.

The species in question is badly served by this process, as are the citizens in the area. The delay in listing a species, or designating a habitat, for political reasons, may permit damage to the species that could have been avoided through consultations and negotiations, were the act itself being interpreted in anything less than a procrustean manner. The very rigidity of the Supreme Court's interpretation may be defeating the purposes of the act.

Finally, the committee report warns us that there are many more Federal actions underway which threaten to pose the kind of irresolvable conflict which resulted in the *Tellico* case, and that as the number of species listed and habitats designated increases, the number of potential conflicts can only increase at the same pace.

For these reasons, it would be a mistake to conclude from experience to date that the act is "working well," and that there is no need to modify it. Indeed, the analysis I have just gone through suggests the directions in which the modifications should take place.

Last week I introduced a comprehensive rewrite of the 1973 Endangered Species Act. I apologize to my colleagues for not having introduced it sooner, but like everyone else around here, I have more to do than my staff can accomplish. I note that the hearings on the bill now before us have not yet been printed, and will not be for another 2 weeks or so. In any event, the amendment I introduced embodies what I see as a rational balance between the competing responsibilities we have as Senators, the responsibility to preserve the political and economic system which enables us to be concerned about species other than ourselves, and the responsibility to act on that concern.

In view of the time limitation, it is not my intention to debate this amendment at length, but I would like to take a few minutes and go through it, section by section, explaining how it differs from present law, and from the Culver-Baker bill which is before us. I do that in the hope that it will serve as a vehicle for future discussion, and that some of the principles in it will contribute to the present debate.

Section 1: No change.

Section 2: This section contains the congressional findings and declaration of purpose of the act. I have made only a few changes in this section, to broaden the focus of our concern to both plants and animals, and to direct it to aspects of our activity that we can realistically do something about. For instance, I feel that we should concentrate on our native flora and fauna, and not attempt to interfere with the activities of other countries. We should also concentrate on human activities, recognizing that the forces of nature are still largely beyond our control.

Perhaps most significantly, I have added language to this section which clearly and explicitly recognizes that as a Federal Government, we have obligations other than the preservtion of species, and recognizes that sometimes those obligations may conflict with the desire to protect species and species diversity.

Section 3: This is the definitions section, and I have made a number of changes. The term "conserve" is changed, for example, by substituting the words "prudent and reasonable" for the word "necessary" in the present act. This change is designed to recognize that methods and procedures which are necessary to the preservation of a species are not necessarily either prudent or desirable. For instance, the preservation of a given species might conflict with an overwhelming national defense requirement. The definition is also changed to provide for enhancement of habitat. Under present interpretations, enhancement is permitted under very limited circumstances; my amendment seeks to permit "net enhancement," even if some critical habitat is destroyed. Netting out enhancement and destruction is not permitted under the present regulations.

The term "endangered species" itself is changed to make clear that we are talking about species designated under this act, and not about species that might have been designated under the laws of a State or another country. I would also permit the designation of a species as endangered even in some portion of its range that is less than "significant." So that I am not misunderstood, what I am trying to do here is to permit the protection of a major species, such as the alligator, which may be threatened in a restricted geographical locale, but is not over its entire range, or even over a significant part of its range. With the degree of flexibility written into my proposal in other places, it is my hope that this provision could not be used to defeat the purposes of the proposal.

My definition of "endangered species" would permit the extirpation of any declared pest, and not just insects, as under the present act. I have mentioned the smallpox virus before. As it is now, the virus cannot be extirpated, consistent with the act, since it is not an insect. There might also be cases where even vertebrates might be so noxious that they should be eliminated. The restriction to insects is too rigid, and there is no good reason for it.

My definition of critical habitat would require that it be designated at the same time as the species is listed as endangered. I would like to prevent the kind of delay we are now experiencing. I also seek to keep the portion of the natural range of the species that must be designated as critical less than the entire range of the species.

My definition of "species" is revised in a more biologically defensible way. The present definition has given rise to a certain amount of confusion. Let me repeat, however, that what I am interested in is flexibility. A species does not have to be endangered over its entire range in order to be endangered.

I have redefined "take" to include only actions purposely taken to harm an endangered species. The reasoning here is clear. Malicious activity should be prohibited, but normal land management practices, carried out on private lands and without Federal environment should not be reached.

Section 4: This section deals with the process for determining an endangered or threatened species. My amendment would also include under this section a provision for the designation of critical habitat, at the same time as the species is determined to be endangered or threatened. In order to achieve the goal of protecting an endangered or threatened species, the Federal land manager or permitting official must know not only of the status of the species, but of the habitat on which its continued existence exists. The present act has no requirement for the designation of critical habitat, though that is now done by regulation. As mentioned earlier, the delay is confusing and potentially harmful to the species in question.

This amendment would also add a requirement that the designation of a species and habitat carry with it an analysis of the effects of the designation on the environmental quality and economic development. What we are looking for here is not necessarily an environmental impact statement, though that may occasionally be necessary, but some kind of assessment of the environmental question, and an assessment of the economic impacts of such a designation.

The designations under this section shall be made on the basis of sound data. The present requirement is that decisions be made on the basis of "the best" information available. Now as it happens, the best that may be available may be a courthouse—or laboratory—rumor. "Hey, professor, I heard that Clarence's fritillary is endangered." While that may be the best information available, it is far from sound, and the designation of an endangered species should not be made on it. Besides, there may always be debate over what data are "the best," while it is usually possible to get agreement that data are "sound," even when individual scientists may not agree with them.

Also in this section I have tried to counter some of the criticism of the present process for listing species as endangered. I have expanded the range of information that has to be made available to the public, and tried to assure that proposed designations receive proper scientific scrutiny. Since few scientists read the Federal Register, my amendment would require the Fish and Wildlife Service to offer to the appropriate scientific journals a summary of the proposal for listing of species and designation of habitat. We cannot, obviously, compel the editors of these journals to carry the notices, but if the scientific community is going to criticize the present process, I think it likely that they will avail themselves of this proposed revision.

I have added a provision prohibiting the listing of species in other countries as endangered without their consent. Unless we obtain the concurrence of foreign governments, we are gratuitously insulting them, and unlikely to gain their cooperation. If we want to prohibit the importation of a foreign species, or products made from foreign species, let us do so directly, and not exercise what amounts to an ecological imperialism which is insulting to other countries. Many countries are still more concerned with feeding and clothing their populations than they are with preserving esoteric species of wildlife. That is an understandable position, and we should respect it. We are more likely to gain our own ends if we refrain from insulting other nations.

I have eliminated the "similarity of appearances" portion of this section, since I am informed that there are adequate tests available to make a determination of species identity.

Section 5: This section deals with land acquisition. I have provided some compensation for losses caused by the act which do not result directly from land acquisition, and have established a new procedure for compensation for taking. Since this is a new procedure, I have limited the authorization of 1 year, after which we should consider the actual operation of this provision. Some of my colleagues have suggested that it would be better to prohibit the use of eminent domain in acquiring land under this act, and I confess that I am attracted by that idea. However, in this amendment, I have not gone that far.

Section 6: The section dealing with State cooperation has been broadened to include consultation with private landowners, which in many cases may avoid conflicts that now arise. My amendment also provides more flexibility to the States in the kind of programs that can be considered acceptable. We should be well past the day when we operate on the basis of a monopoly of wisdom in Washington. If a State chooses not to designate a specific species as endangered, for example, that should not invalidate the State plan. The Federal Government can retain responsibility for that species, without rejecting the entire State program.

Section 7: This section, on interagency cooperation, is generally considered to be the heart of the act. It is here, of course, that the changes I am suggesting in the act are most critical.

In the case of TVA against Hill, the Supreme Court concluded that it had been Congress intent to provide endangered or threatened wildlife and plants the highest possible degree of protection from Federal actions. All other national goals, the Court said, must fall in the face of a threat to an endangered species.

That interpretation is, in my opinion, patent nonsense, and it is not the interpretation put upon the act by the Congress in passing it. It is not even the only possible interpretation of the legislative history of the act available to the Court. In my opinion, the Chief Justice read the legislative history very selectively, and I may have more to say on that subject at another time.

However that may be, the Court may have done us a favor in this case if his threat to take the Congress seriously is heeded. As I have said elsewhere, we should be careful about the vague and fuzzy language we write into law. There is always a chance that it will be taken seriously. That threat should keep us from passing the Humphrey-Hawkins bill, the natural diversity bill, and a host of other well-intentioned, but vague pieces of legislation.

The fact is that however desirable it may be to preserve an endangered species, and I for one count it as desirable indeed, there may be considerations of health, well-being, or national defense, which must take precedence. In some circumstances, there may even be considerations of convenience and comfort which should take precedence. As interpreted by the court, the act at present provides no mechanism for balancing these interests.

To overcome that problem, my proposal adds the words "insofar as practicable and consistent with their primary purposes" to describe the way in which agencies and instrumentalities of the Government are to carry out their obligations to preserve endangered species. No doubt I will be accused of gutting the act by this suggestion, but I just have to reject that charge. I am trying to take reality into account. It does us little good to stand, like King Canute, commanding the tides not to come in. We will be far better off to evaluate the situation, and devote our time and energy into doing the best we can for all species, consistent with the other requirements the nature of our society lays upon us. There is nothing particularly crass or mercenary in that stance. It is certainly preferable to a blind opposition to a lifestyle which has given us the possibility of even considering the problem.

In his book "The Twenty-Ninth Day," environmentalist Lester R. Brown cites approvingly an article by Thomas Lovejoy, to the effect that—

> Common sense now argues against trying to save all forms of threatened life and that humans ought to concentrate on helping the fittest survive . . . concentrating all available energies and resources on the most important (ecologically and biologically) of those that remain might pay off.

Interestingly, Lovejoy points out that the elimination of individual species, and the "biotic impoverishment" that accompanies that elimination is an "irreversible process." It is indeed, and it will remain so, no matter how many endangered species acts we pass. We should be concentrating on minimizing the damages of man and his activities, instead of decrying them and seeking to eliminate them entirely.

In my amendment to this section, I have tried to take into account the fact that many of the agencies dealing with the public lands have wildlife expertise of their own, thus reducing the need for consultation with the Fish and Wildlife Service. However, I do provide that the FWS can intervene on its own initiative, where necessary.

Once the consultation process has been completed, and approval given to the project or action, my amendment makes clear that any incidental harm to an endangered species which might then occur would not be considered a "taking" under the act.

Section 8: I have made no significant changes in the international cooperation section.

Section 9: This section deals with prohibited acts, and, along with section 10, has been particularly onerous to the scientific community, to pet handlers and dealers, and to the managers of zoos. I do not flatter myself that my proposal solves all the existing problems, but I think it should result in considerable improvement.

The most significant change is to return the burden of proof of the enforcing agency, where hundreds of years of Anglo-American jurisprudence have placed it. I see no reason to presume an individual or organization guilty until he is able to prove himself innocent. The Environmental Protection Agency has made widespread use of the "rebuttable presumption" of guilt in recent years, but I do not find it defensible.

The committee reports that "large amounts of time and money have been committed to compliance with these regulations, although little may be accomplished by control of museum specimens. There is little evidence that such controls have any appreciable effect on existing populations of endangered species." Under those circumstances, we would be better advised to accept a more traditional approach to enforcement, and proving guilt, rather than requiring others to prove innocence.

Section 10: This section deals with permits required under the act. I have eliminated the 1-year time limit on the hardship exemption, and restored the burden of proof to the prosecuting agency, as in section 9.

Section 11: The only significant change in this section, dealing with penalties, is to make the penalties applicable only to knowing violations. In cases where the violation was unknowing possession of an endangered species, the penalty is reduced to forfeiture alone.

Section 12: No changes.

Section 13: No changes.

Section 14: No changes.

Section 15: The length of the authorization is reduced under this section to 1 year, and $25 million is authorized. I feel that we should review this act fairly regularly for the next few years, in view of its potential impact, and that yearly authorizations are quite appropriate to that end.

Section 16: No changes.

Section 17: No changes.

As I said yesterday, as I look at the act passed in 1973, I do not think the Senate and the House of Representatives at that time had any vision whatsoever the law would be interpreted so specifically, so narrowly, and would be used so cynically by certain environmental groups. We are getting into blades of grass, bony tail chubs, louseworts, weeds, and all sort of things that interfere with legitimate projects of man.

It is the typical overreaction to a problem that we see when Congress acts on a real problem. We did not have sufficient concern for species other than ourselves, but then we pass a law that goes far to the other extreme, far beyond what was necessary to correct the real problem.

It seems to be typical that we swing from one side to another and are not able to grab the pendulum in the middle and stop it with some commonsense and some balance.

But I try to use commonsense, and I recognize that with the environmental pressures on this body, sometimes we do not act with the commonsense that we should. There is absolutely no point in voting now on a comprehensive rewrite of the bill which my amendment is, which I think would make a workable balanced bill where we could preserve legitimate species that should be preserved and yet still have a balance with our desire to preserve economic development, jobs for human beings, and some of those things that I think are rather important as well.

I recognize the realities of what is going on in this body, and that I would probably receive so few votes that I will not put my colleagues to the test of voting on it. So it is my intent to withdraw the amendment.

I do, however, simply repeat that I would hope this would serve as a vehicle for the future, and that we start looking at a more comprehensive rewrite, because I predict the bill as it will pass with the Culver-Baker amendment will not solve the disputes and the problems.

I think the makeup of the committee is bad, although the intent to solve the problems is good. Where you have to have a super majority of five out of seven to vote in favor of an exception—in other words, only three out of the seven have to vote in favor of the species, the weed, blade of grass, or whatever it is, the man-made project is sure to lose. It is stacked in that way to begin with.

Certainly we should have considered, at least, a simple majority. And when you have all the various high Cabinet-level officials, with more pressing duties, who are on this seven-member board, I suspect that they will send their subordinates, their environmental advisers to conferences and meetings, and I suspect that when they vote, there will be very few times that the species, whatever it is, however remote its importance, will not win.

I am sorry. I would hope that some of the amendments we consider today might cut the size of that committee, to cut it down in size so as not to be so cumbersome, or to make the decisions of a simple majority prevail, and require the principals to be at the meetings, no matter how busy, rather than sending their designees, rather than sending some second- or third-rate appointee to sit in on the discussions and meetings when an exception is asked for.

Madam President, at this point, with that discussion, and with the hope that at some time in the future my amendments might serve as the basis for a comprehensive rewrite of this act, so that it can work as it was intended to in 1973, I withdraw my amendment.

Mr. WALLOP. Madam President, will the distinguished Senator withhold his withdrawal briefly?

Mr. GARN. Yes; I am happy to yield to my colleague from Wyoming.

Mr. WALLOP. I thank the Senator from Utah. I would express to him an awareness of, indeed a sympathy with, the frustrations that he shares with me over some of the ways the 1973 act has been interpreted and implemented and, indeed, even the way the Supreme Court necessarily interpreted it to us in its decision in the Tellico case.

To go much further than the provision of the Culver-Baker amendment at this time would, I think, not be in the best interests of either the country or trying to solve the Senator's perceived problems.

They are real problems, and I do not blame him. I share his concern that the entire Colorado River Basin could be, in one fell swoop, declared a critical habitat. I for my State and the Senator from Idaho for his State have expressed continued concern with the attempts of the Fish and Wildlife Service to designate enormous regions of our States as critical habitats for the grizzly bear.

The Senator is correct when he talks about the rigidity of the original law, but the Culver-Baker amendment goes a long way toward reducing it, and goes a long way toward resolving some of the problems that existed earlier with the Tellico case, and potentially exist with respect to other ones.

There has been some significant success with it, and some major confrontations between projects and species, which appear to be continuing on both sides.

I also share with the Senator a concern about any who would use this law, not primarily to preserve species, but primarily to impede man's ability to construct or to provide changes in his environment. I think those people are digging the graves of a number of other species, and I think that irresponsibility may, if continued, trigger just the kind of reaction the Senator brings up.

On the other hand, I do feel that we have seriously attempted to address the problems in a conscientious way, and I think we have recognized the problems the Senator and others have brought up. I think we have recognized certain realities, and that we are in fact going to have to make some decisions at some point. But I do not think it would be wise at this time to go much further.

That is not to say that other amendments will not be offered. Some may be accepted, some debated, and some even voted into the process that we have designed at the committee and subcommittee level. But I would hope Congress would not act too quickly in loosening these procedures. After all, we are not talking about, again, a permanent action, but a bill that will run out and will have to be renewed. We have that time fixed at 3 years, after which congressional review can take place again. We always have the privilege, at any time within the 3 years, of seeking ways to resolve critical problems.

The mechanism was consciously designed, as the Senator well knows, to weigh heavily on the side of the species. That design was interpreted by the Supreme Court in its opinion in the Tellico Dam decision, in which it stated:

> Here we are urged to view the Endangered Species Act "reasonably" and hence shape a remedy that "accords with some modicum of commonsense and the public weal." But is that our function? We have no expert knowledge on the subject of endangered species, much less do we have a mandate from the people to strike a balance of equities on the side of the Tellico Dam. Congress has spoken in the plainest of words, making it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities.

That is the rigidity which the Senator addresses, that exists in the 1973 act. That is the rigidity with which we have tried, in a conscientious way, to deal. It is my hope, and I will grant that it may be a vain hope, that responsible people will act responsibly, and that irresponsible people will cease their dilly-dallying with things which are not directly committed to the intents and purposes of this act and the purposes set out, as a national policy, to protect and enhance endangered species of plants and animals.

On the other hand, I would hate to turn it to a point where responsible people could not, in good conscience, have a mechanism to rescue what in their opinion was in fact an endangered species or class.

So I thank the Senator, I understand what he is saying. I also appreciate the fact that he is going to withdraw his amendment. I assure him that others do hear what is being said, and will probably look at this, as the days and years go along, with whatever form this bill takes out of Congress.

Mr. GARN. I thank the Senator from Wyoming. I would make a further point that I do not disagree with the Supreme Court's decision. I think they were correct. They had no choice. The law was written so narrowly in 1973 that they had to interpret it that way.

My major problem has been, after reading all of the record from 1973 of the committee hearings, that I do not think it was Congress intent to do that restrictive. There is no evidence whatsoever in the legislative language or the report language to back that up, or in the legislative supplemental report.

So most of us who have been trying to modify it have not been trying to make major changes that will be interpreted as gutting the act, but merely to return to what apparently was the intent of the Act of 1973. We have done this in connection with the Clean Water Act, and we have done it in connection with the Clean Air Act. On the Clean Air Act, all we said in the preamble was "to improve the quality of the air."

Some judge interpreted that as meaning nondegradation of air. So in environmental measures, we came back last year and made that part of the law, but it certainly was not part of the Clean Air Act of 1970 that "improved" and "enhanced" be interpreted to mean that you could have no degradation in air quality in areas that were cleaner than the primary and secondary health standards.

I do not intend to go back and debate that, but I merely want to make that point that I certainly think it would not be rushing too far to adopt many of these amendments, to return to what the intent was. There are many who would like to do away with the act completely. I am certainly not one of those. I am certainly not one who wants to take away protection from the endangered species. But I do want to achieve a better balance.

Madam President, I ask that my amendment be withdrawn at this time.

The ACTING PRESIDENT pro tempore. The Senator has that right. The amendment is withdrawn.

AMENDMENT NO. 3256

(Purpose: To require the designation of critical habitat at the same time as a species is determined to be endangered or threatened)

Mr. GARN. Mr. President, I call up amendment No. 3256, and ask that it be considered.

The PRESIDING OFFICER (Mr. Ford). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. Garn) proposes an amendment numbered 3256.

Mr. GARN. I ask unanimous consent that further reading be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 15, add a new section 6, as follows:

Sec. 6. (1) Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by adding a new subsection (20), as follows:

"(20) The term 'critical habitat' means—

"(A) for a threatened or an endangered species, the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (i) essential to the continued existence of the species, and (ii) which require special management considerations or protection;

"(B) when the Secretary so determines, critical habitat for an endangered species can include areas meeting qualifications of paragraph (A) of this subsection into which the species can be expected to expand maturally;

"(C) except in those unusual circumstances determined by the Secretary, critical habitat should not include the entire geographical area occupied by the species.".

(2) Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding new subsections (3) and (4) as follows:

"(3) Critical habitat of an endangered or threatened species shall be designated concurrently with determination of that species' status.

"(4) When such determination and designation are made, there shall be an analysis of the effects of such actions on environmental quality and economic development.".

Mr. Garn. Mr. President, I send a modification of my amendment No. 3256 to the desk.

The Presiding Officer. The clerk will state the modification.

The assistant legislative clerk proceeded to read the modification.

Mr. Garn. Mr. President, I ask unanimous consent that further reading be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The modified amendment is as follows:

On page 15, add a new section 6, as follows:

Sec. 6. (1) Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended by adding a new subsection (20), as follows:

"(20) The term 'critical habitat' means—

"(A) for a threatened or an endangered species, the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (i) essential to the continued existence of the species, and (ii) which require special management considerations or protection;

"(B) when the Secretary so determines, critical habitat for an endangered species can include areas meeting qualifications of paragraph (A) of this subsection into which the species can be expected to expand naturally;

"(C) except in those unusual circumstances, determined by the Secretary pursuant to a determination in paragraph (B), critical habitat should not include the entire geographical area occupied by the species.".

(2) Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding a new subsection as follows:

"(3) Critical habitat of an endangered or threatened species shall be designated concurrently with determination of that species' status, except in those cases where:

"(A) an emergency exists because no critical habitat information is available or there are other contingencies;

"(B) there are species listed before enactment of the Endangered Species Act of 1973."

Mr. Garn. Mr. President, this amendment deals with the designation of critical habitat under the act. It may well be the case, Mr. President, that the designation of critical habitat is more important than the designation of an endangered species itself. In many cases, it will not be until habitat is declared to be critical to the continued existence of an endangered species that it will have impacts in the real world. Certainly, it is not until habitat is determined to be critical that Federal agencies can begin the kind of consultative process contemplated by the Culver-Baker amendment, or other amendments offered during this debate.

When a Federal land manager begins consideration of a project, or an application for a permit, it is essential that he know, not only of the existence of an endangered species, but also of the extent and nature of the habitat that is critical to the continued existence of that species. Unless he knows the location of the specific sites on which the endangered species depends, he may irrevocably commit Federal resources, or permit the commitment of private resources to the detriment of the species in question.

That is the thrust of this amendment. It simply requires that at the time a species is declared to be threatened or endangered, the appropriate habitat be designated as critical. Obviously, an analysis of the environmental and economic effects of this designation should be made, but the amendment does not make them controlling. They must simply be stated for the record.

It is also my intent that the extent of "critical habitat" not necessarily be coterminous with the entire range of the endangered or threatened species. In fact, I would expect that in most cases it would not be.

The Presiding Officer. Who yields time?

Mr. Wallop. Mr. President, I believe the Senator from Utah would like unanimous consent to amend the amendment that he sent to the desk.

The Presiding Officer. It is the Senator's prerogative to modify his amendment further. If he wishes to do so at this time, he may.

Mr. Garn Mr. President, I send a further modification to the desk.

The amendment, as further modified, is as follows:

> **On page 15, add a new section 6, as follows:**
>
> **Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding a new subsection as follows:**
>
> **"(3) Critical habitat of an endangered or threatened species shall be designated concurrently with determination of that species' status, except in those cases when:**
>
> **"(A) an emergency exists because no critical habitat information is available or there are other contingencies;**
>
> **"(B) there are species listed before enactment of the Endangered Species Act of 1973."**

Mr. Wallop. Mr. President, essentially what the modification of the Senator from Utah has done is simply to strike from his amendment that which the Senator from Idaho (Mr. McClure) already amended in the bill yesterday. The amendments are similar.

He was trying to avoid the redundancy of duplicating provisions.

As I understand it, the effect of the amendment of the Senator from Utah is to require that at the same time a species is listed, its critical habitat be designated. Is that correct?

Mr. Garn. That is correct. We modified it so that there was an emergency procedure whereby, if particular habitat information was not available, they could designate endangered species without having to designate critical habitat.

With those two modifications, I agree to both of them, and am satisfied with the amendment.

Mr. WALLOP. Mr. President, so far as the minority is concerned, the amendment is acceptable.

Mr. RANDOLPH. Mr. President, as I understand it, the able Senator from Utah is presenting an amendment which, consonant with what has been done at an earlier time in this Chamber, provides for a more orderly manner. Is that correct? Is that what the Senator desires?

Mr. GARN. That is correct. The major point of the amendment is that if you designate endangered species without knowing what the critical habitat is, the committee that is being set up by the Culver-Baker amendment may not have enough information on which to judge the impact. This requires that at the time they place a plant or animal on the endangered species list, they also designate the critical habitat, if they can.

Mr. RANDOLPH. I think it is a realistic approach.

Mr. WALLOP. It is also my understanding that with respect to those species which already are designated, there is a time period in which those critical habitats can be designated. This is future designation.

Mr. GARN. That is correct. It does not go back prior to 1973.

Mr. RANDOLPH. That is why I spoke of the orderly procedure. It sets itself in that mold. Is that correct?

Mr. GARN. That is correct.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. GARN. I yield.

Mr. NELSON. I would like to be clear on this point. Does the amendment mandate that at the time the Secretary of the Interior decides to place a species on the endangered species list, the critical habitat of the species shall be identified?

Mr. GARN. That is correct. However, there is an escape clause in it that says if the critical habitat information is not available, in the event of an emergency type situation, where it is necessary to place a species on the endangered species list, they do not have to. So there is an escape clause. In the event it is necessary to place something on the endangered species list quickly in order to preserve it, and they do not have sufficient data on which to designate the critical habitat, they do not have to.

Mr. NELSON. I am just trying to puzzle out in my mind what this language means, what the implications are, and what the potential for lawsuits is.

Obviously, if a species is identified as endangered, it has to exist in some kind of habitat. But suppose the Secretary says, "We know this is an endangered species simply because, from all the reports of scientists, there are very few left. But we are not certain where that habitat is, except that we know it exists right here." Obviously, that is the habitat where the plant or the species, whatever it is, exists. So he has identified an endangered species, but he says, "I know this is part of its habitat, but we don't know where else the habitat is or what the dimension of the habitat is." Where is the Secretary left under your amendment?

Mr. GARN. I point out to the Senator that one of the major reasons for this amendment is that we sincerely want to protect the endangered species. Placing it on the list does not necessarily do that. If you do not have the area designated for its critical habitat necessary for its continued existence, then you may have infringements upon that area that could endanger the species.

On the other hand, it also would allow people who are looking at projects, and so on, to look into the future and decide whether or not they would be able to go ahead with their projects.

It seems to me that you have a cart without a horse, or vice versa, unless you try to put them together. The emergency clause takes care of situations in which it simply is not possible to be done. They do not know, and they cannot get the information to do it at the same time.

Mr. NELSON. I certainly agree with the Senator that whenever the habitat can be identified, it should be; because if you are going to protect it, you must know where the habitat is located.

I have not had a chance to study this amendment, and I wonder whether the Senator can respond to this question: If an endangered species is identified by the Secretary, and he proposes to put it on the endangered species list, but he states at the time, "We cannot give you a specific description of its habitat, except that it is found as of now right here, but the department is now proceeding to investigate to determine where its habitat is located," could he be prohibited at that point from placing the species on the endagered species list?

Mr. GARN. No, that was the purpose of the emergency clause that was put in the amendment. I modified my amendment.

Mr. WALLOP. It is the present policy to designate habitat and species at the same time. The Wildlife Administration have seen this and find the amendment acceptable.

Also, it is my understanding that the Senator from Utah does not contemplate that the species and its habitat as designated first on the list are forever coupled and engraved in marble; that the habitat may be expanded or contracted, as the needs of the species require at a given moment.

Mr. GARN. There is nothing that would prohibit anyone from changing that designation, if new information became available.

Mr. WALLOP. Mr. President, I yield back the remainder of my time.

Mr. GARN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment, as modified, was agreed to.

AMENDMENT NO. 3125

Mr. NELSON. Mr. President, I call up amendment 3125 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Wisconsin (Mr. Nelson), for himself, Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes an amendment numbered 3125.

Mr. Nelson. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 3, line 12, after the word "unless", insert the following: ", in the case of any action for which a substantial and irretrievable commitment of resources had been made before the possible adverse effects of such action upon endangered or threatened species or their critical habitats were made known either as a result of such agency's own review of its activities or as a result of information furnished to such agency by the Secretary,".

On page 11, line 21, insert a new clause (iii) as follows:

"(iii) a substantial and irretrievable commitment of resources had been made before the possible adverse effects of such action upon endangered or threatened species or their critical habitats were made known either as a result of information furnished to such agency by the Secretary; and".

On page 11, line 21, renumber existing clause (iii) as (iv).

Mr. Nelson. Mr. President, this amendment addresses itself to the exemption process that is provided in the Culver-Baker bill, S. 2899.

Everyone agrees that the consultation process is important. I think there are some ways we can strengthen that process, thus improving the Culver-Baker amendment from an environmental point of view.

Mr. President, amendment No. 3125, simply limits the availability of the exemption process to a narrow range of cases consisting of those Federal actions for which a substantial and irretrievable commitment of resources had been made before the adverse effects of such actions upon endangered species were made known to the agency sponsoring the action.

The Senator from Iowa and I agree completely on at least this one fundamental fact. We both agree that the consultation process presently required by the act has been remarkably successful in identifying solutions that allow development to continue without jeopardizing the survival of endangered species.

Accordingly, I am satisfied that the Senator from Iowa and I share the strong conviction that nothing should be done which would undermine or harm the effectiveness of the consultation process in that broad range of cases where it is presently working so well. I believe that this conviction requires that whatever exemption is carved out from the existing requirements of the act be limited to the very narrow range of cases that post actual or potential problems.

Because of the experience with Tellico Dam and because of a very small number of other Federal projects which the Senator from Iowa and the Senator from Tennessee believe may come into conflict with endangered species in the future, the Culver-Baker bill was drafted to establish a procedure whereby these projects could be eligible for an exemption from the requirements of the act. Both Tellico Dam and the various other projects that have been identified as possibly involving major conflicts with the act have one important characteristic in common. They each involve a situation in which a substantial and irretrievable commitment of resources had been made to the project before its possible adverse effects upon endangered species were made known to the agency sponsoring it. However, the Culver-Baker bill does not limit the exemption mechanism it creates to projects sharing this important characteristic. Rather, its exemption mechanism is equally available to all Federal actions, even those that are still in the planning or early development stage.

Clearly, the Culver-Baker bill offers an overly broad, it seems to me, solution to the narrow range of problem cases it purports to address. Moreover, by creating the opportunity for exemptions to be granted to all types of projects, regardless of the extent of the resources commited to them, the Culver-Baker bill threatens to destroy the consultation process for the very types of projects for which it has thus far worked exceedingly well and for which it should otherwise continue to work well. This threat arises because the possibility of being granted an exemption will almost certainly encourage Federal agencies to dig in their heels and become intransigent and inflexible during consultation. The rewards to them can be very great—they could be granted an exemption without modifying their project proposal at all. Their risks are very small—if the exemption is denied, they can then go back and be reasonable, making the compromises that they must make under the law in its present form. Moreover, it is unlikely that the Endangered Species Committee will be able to police against this threat to the consultation process which we all agree is very important. A very fine line separates bad faith consultation from "hard-nosed" consultation. In most cases, it is unlikely that the committee will be able to distinguish the two, and thus the result will be to undo the effectiveness of the current consultation process, which is so important and works so well under the current law.

What can be done to minimize this serious threat? This amendment would minimize it by limiting the range of cases which the committee can hear to those actions for which a substantial and irretrievable commitment of resources had been made before the possible adverse effects of such actions on endangered species were made known to the agency sponsoring the action. This limitation will insure that all other actions, which by their nature must be amendable to redesign, relocation, or other modification, continue to be subject to the effective consultation procedures of existing law.

Will this amendment preclude from consideration for an exemption a totally new project which everyone might agree is in the public interest? Although the theoretical possibility exists that at some time in the future a compelling worthy project will be conceived which, from the moment of its inception, can only be located in a particular place, can only be built in a particular manner, can only be operated in a particular way, and which is irreconcilably in conflict with the survival of an endangered species, it must be admitted that a project of the type hypothesized has not yet occurred.

Moreover, if the act is to be amended so as to provide the opportunity for an exemption to be granted for this unique project; the same opportunity will be created for the vast range of new projects which can be redesignated, which can be relocated, or which can be otherwise modified so as to avoid their endangered species conflicts. The creation of that opportunity, however, will expose the chance of resolving those conflicts through the consultation process to the grave risks I have described. On balance, it seems clear that a solution which could destroy the effectiveness of the act for the broad range of cases, or if not destroyed it, at least seriously compromise it, presently being satisfactorily resolved should not be created just to accommodate this theoretical concern for a project which as yet has not materialized.

Next, this amendment encourages agencies to commit their resources to a project before they make any effort to determine whether endangered species might be affected by it? No. The Federal regulations that implement section 7 of the Endangered Species Act today require each agency to review its activities and to identify those which may adversely affect endangered species. The Secretaries of the Interior and Commerce may also review the activities of other agencies and identify those which have such effects. In addition, NEPA, the Fish and Wildlife Coordination Act, and other Federal statutes require agencies to make early assessments of the environmental effects of their actions.

Assuming, however, that an agency might ignore all these requirements and rush ahead with development so as to assure itself eligibility for consideration for an exemption, it is almost certain that an agency willing to do that for a project would also be unwilling to compromise in the consultation process. Moreover, if this objection has any merit, then it is already applicable to the Culver-Baker bill, for an agency has under that bill the same incentive to build quickly and foreclose the consideration of alternatives before its begins consultation. Thus, for that agency and that project, the Culver-Baker amendment in its present form offers no greater safeguard than it would if amended by my amendment.

For all these reasons, it is clear that this amendment would continue the effective functioning of the act for ~~that~~ broad range of cases where it presently works well, yet would provide that the Culver-Baker exemption process be available for the few cases that are thought to pose serious conflicts.

Mr. President, how much time does the Senator from Wisconsin have on this amendment?

The Presiding Officer. The Senator has 3 minutes remaining.

Mr. Nelson. I reserve the remainder of my time.

The Presiding Officer. The Senator from Iowa.

Mr. Culver. Mr. President, this amendment (No. 3125), the so-called Nelson amendment, really constitutes a "reverse grandfather" provision. Yesterday the Senate, in my judgment wisely, soundly rejected another form of grandfather clause to exempt from consideration by the Endangered Species Committee a large category of projects.

Mr. President, as I say, this is really a reverse grandfather clause, because it would allow into the review process only those projects which are substantially completed when the conflict is discovered; and apparently it is the intention of the author of this amendment to limit the cases for review to those large, celebrated projects such as Tellico.

Mr. President, this amendment does have some superficial appeal, but I see very real and substantial problems with it, and in my judgment its adoption would be very undesirable indeed.

The reason why I feel that way, Mr. President, is that this amendment has the effect of requiring that a substantial commitment of resources be made before a project can be considered for an exemption. This actually will, in my judgment, have the effect of discouraging agencies from undertaking a sound biological inventory early in the project's stages, and it may also have the effect of deterring any real inclination to engage in good faith discussions and negotiations early in the planning stage.

Consider the case of the Dickey-Lincoln Dam that we hear so much about today. I know the Fish and Wildlife Service has said that there is no problem with Dickey-Lincoln.

But there are a number of contingencies that must be met before the matter is put to rest. The Fish and Wildlife Service says, "If the fellows on the other side of the table will be kind enough not to take issue with us, there will be no problem."

That reminds me of our SALT negotiation. You know, if those Soviet fellows would do only what we want them to do on Backfire, on the short-range missiles, on the neutron bomb, and on all the other matters, we would not have any problems. That is the way the Fish and Wildlife Service talks about Dickey-Lincoln.

That project involves several hundred million dollars, and it is still in the planning stage.

This amendment could have the force and effect of accelerating the move toward construction. That is apparently what happened with Tellico.

This amendment says the only way you can have any hope for receiving an exemption is to get in there and build; then the damage is done. I thought this act was to preserve and protect the integrity of the environment. What do we want to say, "Just unleash the bulldozers and build, build, build so you can go in for an exemption, so that maybe there will be enough money spent?

That is the whole trouble with this statement. While it is alleged to serve environmental interests, it could have just the opposite effect. And what constitutes "a substantial and irretrievable commitment of resources?"

What on earth is that? Is there a lawyer in the house? Substantial to whom? Irretrievable to whom?

This is nonsensical. We do not even say 50 percent or 40 percent. Forty percent of what? Forty percent of the first trucks you buy? Forty percent of the total project? At what point is the design stage?

Mr. President, can we always assume that there is always an alternative available for projects in their early stages? No. How can you assume there will always be an alternative available at early stages in these projects? There is nothing magical about the time of creation or inception. How can every single case automatically be assumed to be resolvable? Nonsense.

What if the perfect project came along? The Senator from Wisconsin said he could not envision one, or he said it was at least a hypothetical.

Well, perfect to whom? The implication is that the word "perfect" should mean one with overwhelming national interest.

A lot of people do not think Dickey-Lincoln is in the national interest. A lot of people do not think Tellico is in the national interest. A lot of people do not think Seafarer is in the national interest. What if we are talking about an anti-submarine warfare center that because of a particular geologic formation cannot be located elsewhere?

What about the MX? A lot of us may personally feel that it may or may not be desirable. But what if the Soviets develop an increasing capacity in the mid-1985 time-frame to put at risk a high percentage of our own land-based missile systems so that we have to go to the MX? What will be the multiple aim point basing mode? Will it be in a lake; in a trench? Will we dig a lot of holes and move it around? We may have to dig a hole where the Furbish lousewort lives. If the trade-off will be the nuclear annihilation of 200 million people, I submit you may have a case where in the early planning stages you will want to consider an exemption and not tell the DOD, "Go ahead and build the thing and if you built it enough to spend $30 million, then we will tell you should not have done it in the first place."

Mr. President, this is really going to introduce greater inflexibility during consultation.

We provide responsibly in the Culver-Baker substitute that once that designation is made the agency will have to stop dead in its tracks and we say they have to consult. We require that. The pressures on them are far more real and serious.

The Senator from Wisconsin says they may not negotiate in good faith. Well, they may not. What happens if they do not? Then they knock on the door and want an exemption. But nobody answers the door, because before adopting the case, upon receiving that petition through the transom, the first thing the committee must do is to hand it to the Fish and Wildlife Service, who have been one of the parties to the previous negotiations, and say, "We want you to look at their petition and their request for a possible exemption. But before we seriously entertain such a request, we want you to certify that the agency has exhausted every good faith consultative effort to reach an accommodation of this situation."

Mr. President, you cannot ask for anything more than that. That is a protection that is clear, powerful, and strong. It gives the Fish and Wildlife Service the opportunity to say, "You know these fellows have just been real nasty to work with. They have been arrogant; they have been indifferent; they have been bureaucratic. They do not care about the Furbish lousewort. These fellows are not pleasant. Do not pay any attention to them. We want to keep talking to them a while." They will not get in for an exemption and they will not build one single thing until they shape up and genuinely, as a result of mutual consent, come exhausted and throw themselves at the feet of this committee and beg for help.

Mr. WALLOP. Will the Senator yield for one additional comment at that point?

Mr. CULVER. Yes.

Mr. WALLOP. S. 2899 as it is right now provides essentially for the cessation of work once the conflict is discovered. I think that is indeed the protection the Senator from Wisconsin seeks. Once a conflict is discovered which turns out to be irreconcilable after consultation, an agency can seek redress from the committee.

However, once the conflict is discovered, everything stops until it is resolved. I think that is the protection the Senator seeks. I thank the Senator for yielding.

Mr. CULVER. I thank the Senator for his very proper statement.

Mr. President, we cannot assume that there is always going to be an alternative in the early project stages. I do not want to see Federal agencies encouraged to go ahead and build and destroy and additionally aggravate the environment.

And if the perfect project does come along under the provisions of this proposed amendment it could not be reviewed.

Finally, Mr. President, as an additional consideration in opposing the amendment, I believe that it would invite the opportunity for serious risk of cost overrun. As the Senator from Wyoming has stated, the review process that we have set up in S. 2899 provides for proper consideration and weighing of the stage of construction—that will be a factor—along with all these other factors. I would urge rejection of the amendment.

Mr. President, how much time have I remaining?

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. CULVER. I reserve my 1 minute.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. Mr. President, the Senator's interpretation of the amendment and his rhetoric about it is about 100 or a possible 101 percent wrong. What the amendment does is simply narrow the cases under which this committee procedure may be used for purposes of an exemption. For 2 days we have been here, and the committee report has been out for a long, long time, but not a single case has yet been listed, not a single project has not been settled, by the Endangered Species Act. There are not any on the horizon.

The argument is made that, "Somehow or another you have to expand to make exemptions for projects that may come some day."

All this amendment does is to say that this process of exemption is not available unless there has been a substantial and irretrievable commitment of resources.

The Senator from Iowa says, "What does that mean?" Well, the Senator designed the bill himself and has given the committee the responsibility of making definitions. There is no definition in the Culver-Baker amendment about what a region is. Would the Senator stand up and tell us what is a region? Five miles? 10 miles? One county? Ten counties? What is a region?

Mr. CULVER. Well, I——

Mr. NELSON. Will the Senator answer on his own time?

[Laughter.]

Mr. CULVER. The Senator has quite a thing about time. I respect that.

Mr. NELSON. The committee will make the definition. What we are trying to do here is preserve a consulting process that has worked, and it has worked because they did not have an escape hatch to make an appeal.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. NELSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa has 1 minute remaining.

Mr. CULVER. Mr. President, I yield back the remainder of my time and call for a vote on the amendment.

The **Presiding Officer**. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Wisconsin. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. **Cranston**. I announce that the Senator from Nevada (Mr. Cannon), the Senator from New York (Mr. Moynihan), the Senator from Rhode Island (Mr. Pell) are necessarily absent.

Mr. **Stevens**. I announce that the Senator from Missouri (Mr. Danforth) is necessarily absent.

I also announce that the Senator from Maryland (Mr. Mathias) is absent on official business.

The result was announced—yeas 25, nays 70, not voting 5, as follows:

[Rollcall Vote No. 223 Leg.]

YEAS—25

Abourezk
Bayh
Biden
Brooke
Case
Chafee
Durkin
Heinz
Humphrey
Kennedy
Leahy
Matsunaga
McGovern
Metzenbaum
Nelson
Packwood
Percy
Proxmire
Ribicoff
Riegle
Sarbanes
Stafford
Stone
Weicker
Williams

NAYS—70

Allen
Anderson
Baker
Bartlett
Bellmon
Bentsen
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Chiles
Church
Clark
Cranston
Culver
Curtis
DeConcini
Dole
Domenici
Eagleton
Eastland
Ford
Garn
Glenn
Goldwater
Gravel
Griffin
Hansen
Hart
Haskell
Hatch
Hatfield, Mark O.
Hatfield, Paul G.
Hathaway
Hayakawa
Helms
Hodges
Hollings
Huddleston
Inouye
Jackson
Javits
Johnston
Laxalt
Long
Lugar
Magnuson
McClure
McIntyre
Melcher
Morgan
Muskie
Nunn
Pearson
Randolph
Roth
Sasser
Schmitt
Schweiker
Scott
Sparkman
Stennis
Stevens
Stevenson
Talmadge
Thurmond
Tower
Wallop
Young
Zorinsky

NOT VOTING—5

Cannon
Danforth
Mathias
Moynihan
Pell

So Mr. Nelson's amendment No. 3125 was rejected.

AMENDMENT NO. 1424

(Purpose: To authorize the President to grant an exemption to prevent recurrence of a natural disaster in a federally declared disaster area)

Mr. **Scott**. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The **Presiding Officer** (Mr. DeConcini). The clerk will state the amendment.

The second assistant legislative clerk read as follows:

The Senator from Virginia (Mr. Scott) proposes an unprinted amendment numbered 1424.

Mr. **Scott**. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **Presiding Officer**. Without objection, it is so ordered.

The amendment is as follows:

On page 13, line 22, insert the following new paragraph and renumber subsequent paragraphs accordingly:

"(i) Exemptions in Presidentially Declared Disaster Areas—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (e)(2) and (g) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under sections 401 or 402 of the Disaster Relief Act of 1974 or for any authorized Federal project, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to mitigate the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection."

Mr. **Scott**. Mr. President, this is a substitute for my printed amendment 3122. It is an amendment that was drafted from my printed amendment by the staff of the committee, and I believe it has the approval of the managers of the bill.

This amendment would add an exception to the committee's bill for federally declared disaster areas. It would authorize the President to grant an exemption for federally funded public works, for repairs which are necessary in his opinion to prevent a recurrence of a natural disaster.

This exemption would be granted only for projects or repairs in a location as a result of a natural disaster and where the President had made a declaration that it was a Federal disaster area.

Mr. President, all Senators are familiar with catastrophes in their States such as flooding, which have tragic consequences and are of concern to our constituents. When these natural disasters occur, no Senators want the people of their States to witness a paralysis of Government action because of the Endangered Species Act.

As indicated yesterday, in the mountainous southwestern portion of Virginia we frequently have suffered from flooding in the past, and sometimes extensive damage to property and loss of human life have resulted. This amendment would acknowledge that our concern for human suffering, wherever it exists, outranks our concern for the mere possibility that some obscure form of life might become extinct; that we would use our judgment based on the legislation now before us. I urge that the Senate add some flexibility to the rigidity of this act.

Mr. President, I ask the distinguished floor leader of the bill if he will comment at this time.

Mr. **Culver**. Mr. President, I commend the Senator from Virginia for offering this amendment. It is narrowly drafted. We have had an opportunity to work with him on his proposal.

As I understand the Senator's amendment, it would authorize the President to make the determinations required under subsections (e)(2) and (g), and thereby grant an exemption, in two cases. First, it covers the repair or replacement of a public facility damaged by a natural disaster to substantially the same facility as existed prior to the disaster. Second, it covers authorized Federal projects, such as those for flood control, which are vital to avoid future loss of life in the disaster area. Both cases are limited to those which the President determines necessary to prevent a recurrence of the disaster. The amendment will apply only to those instances involving an emergency where the ordinary exemption procedures would not operate quickly enough to avoid future disaster losses.

Mr. President, I yield back the remainder of my time.

Mr. SCOTT. I yield back the remainder of my time. A voice vote will be fine.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3233

(Purpose: To amend provisions relating to the voting requirements of the Committee)

Mr. SCOTT. Mr. President, I call up my printed amendment No. 3233.

The PRESIDING OFFICER. The amendment will be stated. The legislative clerk read as follows:

The Senator from Virginia (Mr. Scott) proposes an amendment numbered 3233.

Mr. SCOTT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is as follows:

On page 5, line 4, strike out "Seven" and insert in lieu thereof "Five".

On page 5, strike out the text beginning after the period on line 11 through line 13.

Mr. SCOTT. Mr. President, under the bill before us, on page 5, it is provided that seven members of the committee or their representatives shall constitute a quorum. The committee consists only of seven members, and a quorum would be every member of the committee. To me, this does not seem reasonable. I thought at first that it might be a misprint.

One member, one of the seven, could absent himself from the committee, and then no decision could be made. He could ask that his representative not attend, and then there would not be a quorum. This could frustrate the operation of the committee.

These are Cabinet-level officials, and they have a lot of other work to do. It would seem reasonable that a quorum to transact business might be reduced from seven to five. This is the thrust of the amendment.

I have talked with the floor leaders on both sides of the aisle, and I understand that this amendment is acceptable to them.

Mr. WALLOP. Mr. President, I again compliment the Senator from Virginia. I think he has added a measure of flexibility to this, and has made it possible to avoid a circumstance in which one person, by virtue of any personal decision or other kind of decision, might essentially have veto power, simply by failing to show up at meetings of this commission. That certainly was not the intent of the committee or the subcommittee. The Senator is quite correct, so far as I am concerned, and the committee is willing to accept the amendment.

Mr. CULVER. Mr. President, the amendment is acceptable.

I also express the appreciation of the committee to the Senator from Virginia. I think the amendment will be useful.

I had an opportunity to review it last night. It was suggested that all members should be present to have a quorum because of the importance of the matters under discussion and the desire to have the contributions from each of the various agencies which comprise the committee.

However, I think the Senator from Virginia is correct in pointing out some of the consequences in terms of the committee's ability to conduct business. I commend him on the amendment, and the committee is delighted to accept it.

Mr. SCOTT. Mr. President, I appreciate the courtesy and the kind remarks of the floor leaders on both sides of the aisle.

I yield back the remainder of my time.

Mr. WALLOP. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 3119

(Purpose: To require a majority vote of the Committee in order to grant an exemption)

Mr. SCOTT. Mr. President, I call up my amendment No. 3119.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Virginia (Mr. SCOTT) proposes an amendment numbered 3119:
>
> On page 5, line 10, strike out "five" and insert in lieu thereof "four".

Mr. SCOTT. Mr. President, this amendment is simple. On page 5 of the bill, it indicates that the committee shall not grant any exemption from the requirements of subsection (a) of this section to the head of any Federal agency for any action authorized, funded, or carried out by such agency unless five members of the committee vote to grant such exception. The vote of the committee members shall not be delegated to any person.

I understand there has been some amendment to some portions of page 5—I am not sure just what it is—by the distinguished junior Senator from Pennsylvania.

We have just agreed that five shall constitute a quorum, and this paragraph says that in order for any action to be taken, there shall be a vote of five members and that the vote cannot be delegated to anyone else, which again means that there must be a unanimous vote, should only five members be present, which would constitute a quorum. My amendment would reduce the quorum necessary from five to four.

In other words, if seven members were present, it would be a bare majority of four—four out of seven. If five members were present, constituting a quorum, or six members were present, constituting a quorum, there still would have to be four votes.

It would have to be a majority, in any instance, to grant an exemption. It seems reasonable to have a simple majority. That is what is ordinarily provided for in the Senate. That is what is provided for in the committees of the Senate. That is what is provided for in basic parliamentary procedure. A quorum generally consists of a majority. Many believe it would be most difficult for five out of the seven members of this committee to favorably affirm an exemption, even though the criteria for such an exemption appear stringent. I believe that in the best interests of the people of this country that a majority vote should be the rule rather than a 5-member vote.

Mr. President, I reserve the remainder of my time.

Mr. Nelson. Mr. President, I have another commitment that requires me to leave the Chamber briefly. However, this is a very important amendment. I do not happen to agree with the distinguished Senator from Virginia. But in any event, it is an important amendment, and I cannot stay at the moment to participate in the discussion, but I think we should have a rollcall vote on it.

I ask for the yeas and nays.

The Presiding Officer. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. Culver. I thank the Senator.

Mr. Nelson. I thank the Senator from Iowa.

Mr. Culver. Mr. President, I rise in opposition to this amendment.

As the distinguished Senator from Wisconsin has observed, this is a very important amendment in terms of the implication to the operation of this bill.

The Environment and Public Works Committee worked extremely hard to strike a balance in the review process itself so that species protection would remain strong but there would also be a degree of flexibility in the act.

We had to balance two competing policy goals and objectives, and a critical element of this balance is the requirement for a super-majority vote on exemptions.

Mr. President, one might ask why is it necessary to require that super-majority. I think there are precedents available to us in some other situations in which similiar policy concerns are present.

For example, in jury trials, we require 12 citizens to be unanimous in the opinion that a person is guilty of an alleged crime. At least one reason for this is that the consequences of human error are so great and a determination of guilty so severe to the individual before the court, that burden should be particularly heavy.

Mr. President, the consequences in the case of an endangered species are great also. As we discussed today and yesterday, we are largely ignorant of the significance of the various endangered species as they become known to us. The permanent disappearance of a life form which had been evolving for some 3.5 billion years is a consequence we little understand or appreciate.

We spoke yesterday about the invaluable medical breakthroughs that have been realized from species which for hundreds of millions of years of their existence we thought to have no apparent value.

If we are going to give the enormous burden to this committee to be the judge and jury and make a determination under these difficult circumstances of limited scientific knowledge, it seems, clearly, that at a minimum the burden should be very great indeed so that we avoid the risk and danger of error and the possible irreplaceable and incalculable consequences of misjudgment.

There is another precedent that occurs in the rules of this body itself, the Senate. The Senate was designed with rules to protect the rights of individual Members, and we make possible that protection with a cloture vote, because the right of free speech, the opportunity to afford maximum chance for truth to prevail, is best enhanced by affording this protection against the danger of errors in judgment of a temporary majority.

Mr. President, it seems to me again we have an example where the protection for the rights of an individual is acknowledged, and given this unusual priority it seems to me only appropriate that similar treatment be accorded to the judgment questions involving the survival or extinction of an endangered species.

The committee has generally resisted changes in the composition of the Endangered Species Committee. We have accepted the excellent recommendations of the distinguished Senator from Virginia on some other procedural aspects of its deliberations, but I think on this issue on the vote required for exemptions the committee feels very strongly, and would have to vigorously oppose the amendment.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. Sparkman). The Senator has 10 minutes remaining.

Mr. SCOTT. Mr. President, this is an amendment which I feel is a good amendment. The floor leaders of the bill both have been most kind in accepting the other two amendments. I did not intend to ask for a rollcall vote. That was asked for by another Senator as is his right.

I believe this is a good amendment. I believe that a majority decision is the type of decision that we should have, but I will not pursue the matter any further and if the floor managers are prepared to yield back their time, I will be glad to yield back my time.

Mr. WALLOP. Mr. President, we are prepared to yield back our time.

Mr. CULVER. Mr. President, I call for a vote on the Scott amendment. The yeas and nays have been ordered and I request the clerk to call the roll.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Virginia. On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Montana (Mr. Hatfield), the Senator from Hawaii (Mr. Inouye), the Senator from South Dakota (Mr. McGovern), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. Domenici) and the Senator from Arizona (Mr. Goldwater) are necessarily absent.

I also announce that the Senator from Maryland (Mr. Mathias) is absent on official business.

The result was announced—yeas 23, nays 69, not voting 8, as follows:

[Rollcall Vote No. 224 Leg.]

YEAS—23

Bartlett
Burdick
Byrd, Harry F., Jr.
Cannon
Curtis
Eastland
Ford
Garn
Hansen
Hatch
Helms
Huddleston
Johnston
Laxalt
Long
McClure
Nunn
Sasser
Scott
Stevens
Thurmond
Tower
Young

NAYS—69

Allen
Anderson
Baker
Bayh
Bellmon
Bentsen
Biden
Brooke
Bumpers
Byrd, Robert C.
Case
Chafee
Chiles
Church
Clark
Cranston
Culver
Danforth
DeConcini
Dole
Durkin
Eagleton
Glenn
Gravel
Griffin
Hart
Haskell
Hatfield, Mark O.
Hathaway
Hayakawa
Heinz
Hodges
Hollings
Humphrey
Jackson
Javits
Kennedy
Leahy
Lugar
Magnuson
Matsunaga
McIntyre
Melcher
Metzenbaum
Morgan
Moynihan
Muskie
Nelson
Packwood
Pearson
Pell
Percy
Proxmire
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Schmitt
Schweiker
Sparkman
Stafford
Stevenson
Stone
Talmadge
Wallop
Weicker
Williams
Zorinsky

NOT VOTING—8

Abourezk
Domenici
Goldwater
Hatfield, Paul G.
Inouye
Mathias
McGovern
Stennis

So Mr. Scott's amendment (No. 3119) was rejected.

UP AMENDMENT NO. 1425

(Purpose: to require wider dissemination of proposed designations of endangered species)

Mr. Garn. Mr. President, I call up my unprinted amendment and ask for its immediate consideration.

The Presiding Officer. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Utah (Mr. Garn) proposes an unprinted amendment numbered 1425.

Mr. Garn. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

Mr. Garn. Mr. President, I will read the amendment myself.

On page 15, add a new section 6, as follows:

Sec. 4(f)(2)(A) of the Endangered Species Act (16 U.S. 1533) is amended by adding a new paragraph (ii) as follows, and renumbering as appropriate:

"(ii) The Secretary shall offer for publication in appropriate scientific journals the substance of the Federal Register notice referred to in (i) above; and".

Mr. Garn. I am happy my distinguished friend from Iowa wants to listen to me. I appreciate that.

This is a very simple amendment, Mr. President, I have had some concern with the process by which endangered species are designated, sometimes in very small groups. In fact, there are some stories about just one scientist saying. "This is an endangered species."

Obviously, they are required to publish these designations in the Federal Register. What I am trying to do is counter some of the criticism of the present processes for listing species as endangered. I have expanded the range of information to be made available to the public.

I tried to assure the proposed designations receive proper scientific scrutiny. Since few scientists read the Federal Register, my amendment would require the Fish and Wildlife Service to offer the appropriate scientific journal the substance of the Federal Register notice designating an endangered species and critical habitat. We cannot, obviously, compel the editors of these journals to carry or print the notices, but if the scientific community is going to criticize the present process, I think it is likely that they would avail themselves of the proposed information due to this revision.

So, very simply, obviously, we cannot, by law, make anybody publish something. There are not very many scientific journals of the type that I am referring to. I expect that it would be a matter of making some copies available of what is in the Federal Register so that they could, if they chose, print them.

Simply, then, I am trying to obtain wider dissemination of these designations to scientific-type people so that they can have their input before the designations are made final.

Mr. Wallop. Mr. President, the amendment is acceptable. It does no violence to the bill and it may provide some service.

The Senator from Wyoming is concerned that members of the press in the scientific community are perhaps no more motivated to find something on their own than members of the press in certain other areas of the world who want everything gathered and handed to them on a plate. To the extent that it provides that kind of service, I think it is probably a useful amendment.

One would have to note with a certain degree of sadness that this still might not be of sufficient interest to them to proceed to use it. Nonetheless, as the Senator has pointed out, nobody will require them to publish it. By providing this, perhaps they may be moved from a lethargic state into one of making some scientific assessment of the determinations of the Secretary. As far as I am concerned and as far as the committee is concerned, the amendment is perfectly acceptable.

We are prepared to yield back the remainder of our time.

Mr. Garn. I am prepared to yield back my time.

The Presiding Officer (Mr. Hathaway). Does the Senator from Iowa seek recognition?

Mr. Culver. I do not seek recognition.

The Presiding Officer. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT 1426

(Purpose: Revising the definitions of "endangered species" and "threatened species")

Mr. Bartlett. Mr. President, I call up my unprinted amendment at the desk.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Oklahoma (Mr. Bartlett) proposes unprinted amendment numbered 1426.

Mr. Bartlett. I ask unanimous consent that further reading be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

> On page 15, add the following new sections:
>
> Sec. ( ) Section 3(4) of the Endangered Species Act of 1973 (16 U.S.C. 1532(4)) is amended as follows:
>
> (1) Strike the words, "a significant portion", and insert "the essential portion".
>
> Sec. ( ) Section 3(15) of the Endangered Species Act of 1973 (16 U.S.C. 1532(15)) is amended as follows:
>
> (1) Strike the words, "a significant portion", and insert "the essential portion".

Mr. Bartlett. Mr. President, I am submitting an amendment to change the definition of "endangered species" and "threatened species." My definition provides that the danger of "extinction' must occur throughout "all or the essential portion" of the range. This new language eliminates the previous reference to "a significant portion" of the species' range, and should eliminate those interpretations such as have occurred in Oklahoma.

My staff have reviewed the legislative history of Public Law 93–205, including the Senate and House reports, the final conference report and the floor debate in both houses. Specifically, they were looking for some narrative discussion of the language contained in these definitions; however, after reviewing these items, no specific discussion was found.

This, I note, is not surprising, since the language appears to be reasonably clear on its face, and therefore, I assure that neither the Senate nor the House Committees felt it necessary to discuss the matter at all.

Looking at the words in light of what I thought at the time, I must agree that the language appears quite clear, and I note that I did vote for the Endangered Species Act. However, in considering this language after agency application, I am now concerned that we were mistaken.

My perception of the words, "extinction throughout all or a significant portion of its range," has changed because of an experience with the Endangered Species Act in my own State of Oklahoma.

The leopard darter, a small minnow, inhabits several small rivers and creeks in Oklahoma and adjacent States. It was recently designated as a threatened species under the act with all of the benefits which accrue with this designation. The minnow has thereby stopped the construction of Lukfata Dam on the Glover River. Lukfata is a multipurpose project including water storage for both commercial and human use and flood protection. The project also significantly improves the rate of stream flow which is evidenced in an increase in the number of days available for recreation—primarily canoeing. This flow in itself is important to the leopard darter because it allegedly needs this free flowage to flourish.

The estimates by the Corps of Engineers of the effect of the dam on the Leopard Darter's loss of range are 12 percent. There are no estimates as to what the impact of the increased stream flow might have in the way of increasing its range. There are allegations by environmental groups that the range would be decreased by more than 12 percent; however, I am unaware of any substantive figures. Therefore, we are left with one estimate of a relatively small impact with additional unsupported allegations of a greater impact by environmental groups.

The area, on this slim basis, has been left without the benefit of the reservoir.

I do not personally believe that 12 or 20 percent or even some other adopted the language defining endangered and threatend species in this case.

The definition of the word "all" is fairly obvious, and I will not belabor the Senate by reviewing dictionary definitions, but the word "significant" as defined in Webster's New World Dictionary of the American Language or in Funk and Wagnall's Modern Guide to Synonyms and Related Words, does not specifically fit the usage of the act, but I believe that the definitions and synonyms provide a guide as to what was intended by the committee. I would like to briefly read parts of both of these books.

WEBSTER'S NEW WORLD DICTIONARY

Sig-nif-i-cant (-kant) *adj.* [*L. significans*, prp. of *significare*, to SIGNIFY] 1. a) having or expressing a meaning *b*) full of meaning 2. important; momentous 3. having or conveying a special or hidden meaning; suggestive 4. of or pertaining to an observed departure from a hypothesis too large to be reasonably attributed to chance [*a significant* statistical difference]—n. [Archaic] something that has significance; sign—sig-nif'i-cant-ly *adv.*

FUNK & WAGNALLS MODERN GUIDE TO SYNONYMS AND RELATED WORDS

Significant, consequential, grave, important, momentous, serious, vital, weighty. These words refer to factors that are outstanding, crucial, or that have considerable force or effect. Significant suggests something that is outstanding because it is especially meaningful or excellent no urgency or forcefulness is necessarily suggested by the word, however: a *significant* trend in the public-opinion polls; a *significant* but often overlooked masterpiece of Hellenistic art. Consequential stresses that something is meaningful, cannot be overlooked, or has considerable impact on succeeding events, especially of a negative nature: a *consequential* contribution to the theory of cultural diffusion; a *consequential* decision to refuse the colonists representation in Parliament. In another context, the word can often refer merely to the possessing of wealth or status: the town's two or there most *consequential* businessmen.

Important, the most general of these words, is also considerably less formal than the preceding words. As its root "import" suggests, it may refer to something that is rife with meaning, but it can also suggest almost every sense that any other word here more specifically points to. In any case, the word has been weakened by overuse, especially in the superlative, referring now to anything mildly interesting, noteworthy, or of value: one of the most *important* battles of the war; an *important* new talent; an *important* trend toward smaller families.

Momentous and vital both refer to things that are crucial or essential. *Momentous* stresses the great and immediate impact of an event, though it also points to *significant* ramifications or results, like *consequential*, but without any suggestion that these need be undesirable: a *momentous* turning point in evolution; the *momentous* decision to drop the atom bomb on Hiroshima. *Vital*, in contrast to *momentous*, can indicate an element that is organic and essential to the well-being or functioning of the whole: a *vital* organ of the body; raw materials *vital* to the war effort. Deriving from the Latin word for life, it often means crucial or of life-and-death importance: a *vital* error; a *vital* question. It can also describe something dynamic, full of life and energy: a *vital* young executive; a fresh, *vital* work of art.

With grave and serious, the emphasis shifts to something that is urgent or crucial and that promises to have an extremely undesirable outcome. *Grave* is the more restricted of the two, specifically suggesting something that may well have a fatal conclusion: a *grave* illness; a pilot in *grave* danger. Occasionally the word can refer more generally to something ponderous or solemn, with no suggestion of a negative outcome: addressing me with a *grave* manner; a *grave* treatise on the new science of ethology. *Serious*, like *important*, is considerably less formal and more general than the other words here. It does suggest the crucial, ponderous, or solemn, like *grave*, but with less emphasis on urgency and even less on negative eventualities. Like *important*, the word has been weakened by overuse, especially in the superlative: one of the most *serious* flaws in his character. Categorically, the word can distinguish the sober from the pleasant, light, or comic: a *serious* expression on his face; a *serious* discussion. In this use, it is a milder substitute for *grave*; here, neither word necessarily suggests something unusually meaningful or effective.

Weighty refers to factors that are not easily disregarded: *weighty* considerations that militated against an immediate counterattack. But it can also refer to a decisive preponderance or to presentations that are excessively lengthy, abstruse, or solemn: *weighty* data that disproved the argument for spontaneous generation; a *weighty* treatment of the origins of Roman fertility cults. See CONCLUSIVE, OUTSTANDING.

Antonyms: insignificant, MARGINAL, TRIVIAL, *unimportant.*

WEBSTER'S NEW WORLD DICTIONARY

Es-sen-tial (e sen'shal) *adj.* [ME. *essencial* < LL. *essentialis:* see ESSENCE] 1. of or constituting the intrinsic fundamental nature of something: basic; inherent [an *essential* difference] 2. absolute; complete; perfect 3. absolutely necessary; indispensable; requisite 4. containing, or having the properties of, a concentrated extract of a plant, drug, food, etc. [an *essential* oil] —n. something necessary or fundamental; indispensable, inherent or basic feature or principle —es.sen'tial.ly *adv.*

SYN.—Essential, in strict usage, is applicable to that which constitutes the absolute essence or the fundamental nature of a thing and therefore must be present for the thing to exist, function, etc. [food is *essential* to life]; an indispensable person or thing cannot be done without if the specified or implied purpose is to be achieved; *requisite* is applied to that which is required by the circumstances or for the purpose and generally suggests a requirement that is imposed externally rather than an inherent need [the *requisite* experience for a position]; *necessary* implies a pressing need but does not always connote absolute indispensability.

If the distinguished floor manager would further indulge me, I would like to briefly review the definition of essential which more accurately reflects the intention of the act.

I believe that this amendment will resolve the confusing application of the Endangered Species Act, and retain sufficient protection to insure that we do not decimate various species.

Mr. President, as I said, my amendment changes two words in the definition of "endangered species" and "threatened species." It changes "a significant" to "the essential portion."

The definition of the term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the class of insects determined by the Secretary to constitute a pest whose protection under the provisions of this act would present an overwhelming and overriding risk demand.

So the change is in the language from "throughout all or a significant portion" of its range to "throughout all or the essential portion" of its range. The same change would be made in the definition of the term "threatened species."

My interest was directed to this because of the situation in Oklahoma in which the Lukfata Dam, which was just in the process of being commenced, was stopped by a decision that the leopard darter loss of range of 12 percent did threaten the extinction of the leopard darter and brought out the fact that the word "significant" does not really provide the definitive meaning that I think was intended or is necessary in both of these definitions.

The Corps of Engineers testified that the range would be decreased by 12 percent with the construction of the dam. Environmental groups testified that it would be more than that, although they did not give definite and substantive figures.

I feel that this amendment provides the opportunity in the definition for consideration to be given to varying percentages which might be much more pertinent and accurate to the situation than would be evident with the language that is now in the two definitions.

Mr. President, I yield back the remainedr of my time.

Mr. Wallop. Mr. President, before the Senator yields his time——

Mr. President, I yield back the remainder of my time.

Mr. Wallop. The Senator has come across a flaw in the original act which is minor but, through interpretation, as is sometimes the case, has become major. I ask the Senator if he would basically agree that his definition of "essential" would be that portion of its range that does not necessarily imply that the species must be endangered over the vast majority of its range or even the most crucial part of its range; in other words, if "essential" means that portion of the range necessary for the continued survival and recovery of the species.

Mr. Bartlett. Yes, I agree with that definition of the word "essential" and I think it is important that that be understood.

Mr. Wallop. Mr. President, if that is the meaning and definition that is basically agreed upon as the definition of the word "essential," it provides no problems to the committee or the subcommittee and we are perfectly willing to accept the amendment. W yield back the remainder of our time.

The Presiding Officer. Do both sides yield back?

Mr. Bartlett. I yield back the remainder of my time.

The Presiding Officer. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 1427

Mr. McClure. Mr. President, I have an amendment which I send to the desk.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Idaho (Mr. McClure) proposes an unprinted amendment numbered 1427.

Mr. McClure. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

> On page 14, line 22, insert the following new section and renumber the following section accordingly:
>
> "Sec. 5. The third sentence of section 11(a)(1) is amended by inserting the word 'knowingly' after the word 'otherwise.' "

Mr. McClure. Mr. President, the statute now requires that in the event of a criminal offense, it be done willfully, and in the civil offense section, all but one portion of that section requires that the offense have been done knowingly.

This amendment simply would add in the one remaining portion of the civil penalty section that for the imposition of a $1,000 civil penalty, the offense have been committed knowingly.

I have discussed this matter with the managers of the bill on both sides of the aisle. It is my understanding that they are willing to accept this amendment.

Mr. Culver. Mr. President, I support the amendment offered by the distinguished Senator from Idaho. We have carefully worked it out for both the majority and the minority. We express the appreciation of the committee for his constructive suggestion.

Mr. McClure. I thank the Senator.

I yield back the remainder of my time.

Mr. Culver. I yield back the remainder of my time.

The Presiding Offcer. Without objection, the amendment is agreed to.

AMENDMENT NO. 1428

Mr. McClure. Mr. President, I have an amendment which I send to the desk.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Idaho (Mr. McClure) proposes an unprinted amendment number 1428.

Mr. McClure. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

The amendment is as follows:

On page 14, line 22, insert the following new section and renumber the following sections accordingly: "Sec. 6. Section 11(a) is amended by adding a new subsection at the end thereof as follows:

(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed this act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

Mr. McClure. Mr. President, this amendment would add a third subsection to the civil penalty section, saying that if a person acted in the good-faith belief that he was acting in self-defense, there would be no penalty. It would be a bar if it is established by a preponderence of the evidence that he did act in good faith.

This, as Senators know, arises out of an instance in which an elderly couple in Idaho, when threatened by a grizzly bear, killed the bear in self-defense and then were prosecuted by the Federal Government. The jury, believing that the man acted with all good motives, did return a verdict of acquittal. However, he had to go to the expense and the pain and the stress of having been charged with a criminal offense for doing nothing but protecting himself and his wife in their home.

It might be well to note that since the jury has acquitted the gentleman, the Federal Government is seeking to impose the civil penalty as a means of punishment for something which most of us would say was a justified act.

It seems to me to be totally wrong for us to say that self-defense is an adequate reason to take the life of another human being but not a sufficient reason to take the life of an animal that threatens life or the well-being of a person who is forced to defend himself.

Mr. President, I have discussed this amendment with the managers of the bill on both sides of the aisle. It is my understanding that they are prepared to accept this amendment.

Mr. Culver. Mr. President, that is correct. Again, I commend the Senator from Idaho for these proposals. I think they address some areas in the law that perhaps have had some recent experience of misunderstanding, and they will eliminate that kind of ambiguity. I commend him, and the committee supports the amendment.

I yield back the remainder of my time.

Mr. McClure. I thank the Senator from Iowa.

I yield back the remainder of my time.

The Presiding Officer. Without objection, the amendment is agreed to.

AMENDMENT NO. 1429

(Purpose: Relating to the act of self-defense)

Mr. McClure. Mr. President, I have an amendment which I send to the desk.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McClure) proposes an unprinted amendment numbered 1429.

Mr. McClure. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **Presiding Officer.** Without objection, it is so ordered.

The amendment is as follows:

On page 14, line 22, insert the following new section and renumber the following section accordingly:

"Sec. 7. Section 11(b) is amended by adding a new subsection at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species."

Mr. McClure. Mr. President, this is a corollary to the last amendment which I offered and which was adopted. The last amendment dealt with the right of self-defense in the civil penalty section. This one deals with the right of self-defense under the criminal penalty section of the Endangered Species Act.

It is identical to the last amendment, with the exception that the civil penalty section requires the person who has committed the act to establish by a preponderence of the evidence that he acted in good faith. This omits the preponderance of evidence test, because it is in the criminal section, and he is entitled to the presumption of innocence and the reasonable doubt test.

I have discussed this amendment with the managers of the bill on both sides of the aisle, and it is my understanding they are prepared to accept the amendemnt.

Mr. Culver. Mr. President, I rise in support of the amendment of the Senator from Idaho. I wish to thank him for it.

I yield back the remainder of my time.

The **Presiding Officer.** The question is on agreeing to the amendment of the Senator from Idaho.

The amendment was agreed to.

Mr. Culver. Mr. President, it is my understanding that the Senator from Idaho has an amendment.

AMENDMENT NO. 1430

(Purpose: Relating to the payment of claims in connection with critical habitat designation)

Mr. McClure. Mr. President, I have an amendment at the desk which I ask the clerk to state.

The **Presiding Officer.** The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McClure) proposes unprinted amendment numbered 1430.

Mr. McClure. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The **Presiding Officer.** Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

(5) Section 11 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1540), is amended by adding at the end thereof the following new subsections:

"(j) (1) The Secretary of the Interior shall receive, consider, and pay any claim, for compensation from any petitioner for bodily injury, economic, or other loss incurred or sustained by the petitioner, received by the Secretary in accordance with this subsection if he determines that such claim is in accordance with regulations issued pursuant to this subsection, and if he determines that such claim arose out of or in connection with any critical habitat designation or endangered or threatened specie activity, pursuant to this Act.

"(2) Any claim pursuant to this section shall be filed at such time, and in such manner, and shall contain such information as the Secretary shall by regulation prescribe.

"(3) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Mr. McClure. Mr. President, I am not going to belabor this subject very long. I have discussed this with both majority and minority staff, and I understand that the staff on both sides of the aisle has problems with this amendment. However, it does raise an issue which must be addressed at some time, and that is the question of who is responsible for the damage which occurs as a result either of the designation of habitat or the economic loss that accrues because of the designation of habitat or of a species or the depredation of a species that is on the endangered species list and thus protected and the person who suffers loss has no recourse.

It seems to me sometime we are going to have to address that question very directly. Perhaps we have not had enough study, as has been urged upon me at this time, to determine whether or not the exact formulation of this language or even the philosophy of this proposed amendment is appropriate to be enacted in this bill at this time.

It is a broader subject in some ways, but it is certainly not so overbroad but what we could look at it either in terms of what the Endangered Species Act does or upon the depredation question more generally thinking.

We have been restricted in our control of predators, whether they are endangered or not, with great economic loss to the livestock industry of the West, and that is not my sole purpose in this amendment, but that is part of the motivation for the amendment.

Mr. President, I know that the staff and the Senator from Iowa and the Senator from Wyoming are sincerely interested in the problem. I have talked to both of them about it. Sometime we must find an answer.

I am happy to yield to the Senator from Iowa for his comments on the problem as well as on the amendment.

Mr. Culver. Mr. President, I wish to express my appreciation to the Senator from Idaho. I think, as he has indicated, he has introduced essentially a major new policy area for our consideration. I respect his acknowledgement that this is a matter that we should very carefully review at the staff and committee level, and I look forward, as I know the distinguished Senator from Wyoming does, to working with him on this in the immediate months ahead. I do think it is a subject that merits additional consideration and review.

I appreciate him bringing it to our attention.

Mr. McClure. I thank the Senator from Iowa for those comments.

The Senator from Wyoming well knows from his own experience and from the experience of his friends and neighbors in Wyoming that we can in our State suffer loss as the result of the predation by animals on the endangered species list, and there is no way to control the predation, there is no recovery for the loss, because of predation. If society as a whole said this species is worthy of protection and the Government says we are going to protect the species regardless of what it may do to others, then it seems to me society is as a whole has a responsibility to make whole the damage that results from that action by our Government.

I am happy to yield to the Senator from Wyoming.

Mr. **Wallop**. Mr. President, I thank my colleague from Idaho, and he well knows that in the hearings we both expressed these concerns continually. It is not without a certain amount of frustration from time to time that we have been met with a rather bland stare from those who administer this act who sort of say, "So what?" And we had some rather amusing stories presented to the committee in testimony about confrontations with endangered species by the unfortunate citizen who happens to come in contact with it. Not the least of these was the cattleman from Minnesota who was harassed continually by the Service for trying to shoo the endangered species; namely, the wolf, away from his cattle while they were eating them. It is pretty hard to ask a man to sit and smile and say that he is doing a service to mankind while his own living is being devoured in front of his eyes.

The idea of compensation, and to whom and how and when it should apply, is a serious topic which perhaps merits frankly more time than we have given it yet.

But, nevertheless, I give the Senator my assurances that, given any chance at all to work with the subcommittee chairman on this, I will look at it seriously and try to come up with some responsible solution to the problem.

Mr. **McClure**. I thank my colleagues on the committee, because I know both of them have a sense of concern not only for the endangered species, but also for the livelihood and the rights of American citizens. It is a serious problem that must be addressed, and I am conscious of the fact that very likely I could not get the amendment adopted over the opposition of the committee, and I understand the reasons for the opposition, but I do think it is something we are going to have to address without waiting too much longer or we will have done some injustice to some small people, a small injustice by national scale perhaps, but an injustice to them which is major in its proportions.

Mr. President, I withdraw the amendment.

The **Presiding Officer**. The amendment is withdrawn.

Mr. **Curtis**. Mr. President, a parliamentary inquiry.

The **Presiding Officer**. The Senator will state it.

Mr. **Curtis**. How much time is fixed for the consideration of amendments not heretofore at the desk?

The **Presiding Officer**. Thirty minutes, to be equally divided.

Mr. **Curtis**. I ask unanimous consent that I may offer an amendment, and that the debate may be limited to 40 minutes, 20 minutes on each side.

The **Presiding Officer**. Is there objection?

Mr. **Culver**. I object.

The **Presiding Officer**. Objection is heard.

Mr. **Culver**. Under the unanimous-consent agreement there is an agreement for a limitation of half an hour on any amendment, to be equally divided. We have adhered to that for 2 days of debate, and I respectfully have to interject an objection to the Senator's request for that reason.

The **Presiding Officer**. Objection is heard.

Mr. **Curtis**. Mr. President, I ask unanimous consent that I may offer an amendment, that the debate thereon be limited to 30 minutes, and that the amendment, when offered, will have the same status as those amendments that were at the desk when the unanimous-consent agreement was entered into.

Mr. **Culver**. Reserving the right to object, was the request for 30 minutes?

Mr. **Curtis**. Yes, the same time.

The **Presiding Officer**. The Senator is correct.

Mr. **Culver**. I address a parliamentary inquiry to the Chair.

The **Presiding Officer**. The Senator will state it.

Mr. **Culver**. What is the import of the Senator's request with regard to the characterization of the treatment of the amendment as being accorded the same status?

The **Presiding Officer**. All amendments have the same status. Those amendments that come under the 30-minute time limitation did not have to be at the desk at the time the agreement was entered into. The limitation would pertain to any amendment offered in the course of the consideration of the bill. So the request of the Senator from Nebraska is really not necessary from the standpoint of time thereon.

Mr. **Curtis**. I would like to have a ruling on it, however.

Mr. **Culver**. A point of order, Mr. President.

The **Presiding Officer**. The Senator will state his point of order.

Mr. **Culver**. Does this in any way alter the issue of germaneness, or set a precedent?

The **Presiding Officer**. Under the original unanimous-consent agreement, all amendments to the bill must be germane, and the effect of the request of the Senator from Nebraska would be to waive the germaneness requirement.

Mr. **Culver**. A parliamentary inquiry, Mr. President.

The **Presiding Officer**. The Senator will state it.

Mr. **Culver**. This is a very important matter. As floor manager of the bill, I would like to have a clarification. I have been advised, although I have not had an opportunity to study it carefully, that it is likely that the amendment being offered by the distinguished Senator from Nebraska may not be germane. I want to protect our right to exercise that objection at the appropriate time. What would be the appropriate time? I want that right to be protected.

The **Presiding Officer**. The Chair would state that the Senator could object to the unanimous-consent request then there would be no question.

Mr. **Culver**. Mr. President, I object to the unanimous-consent request of the Senator from Nebraska.

The **Presiding Officer**. The objection is heard.

AMENDMENT 1431

(Purpose: To authorize the use of the chemical heptachlor for a limited period to control grasshoppers)

Mr. **Curtis**. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **Presiding Officer**. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nebraska (Mr. Curtis), for himself and Mr. McGovern, proposes an unprinted amendment 1431.

Mr. CULVER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered?

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. 6. (a) Notwithstanding any other provision of law or regulation, the chemical heptachlor may be utilized in the States of Nebraska, Colorado, Kansas, Wyoming, and Oklahoma, in limited areas, such as road ditches and field margins, for the purpose of eradicating or controlling grasshoppers.

(b) The provisions of this section shall terminate upon the expiration of the forty-five day period following the date of the enactment of this Act.

Mr. CULVER. Mr. President, I have been advised that under the unanimous-consent agreement which has been entered into, and which we have been operating under for the last 2 days of debate, and on a review of the amendment, the amendment does appear to be nongermane and unrelated to the Endangered Species Act, which we are now in the process of attempting to reauthorize.

The amendment relates to the Federal control of insecticides, which is more properly the jurisdictional preserve of the Senate Agriculture, Nutrition, and Forestry Committee. It is also my understanding that at an appropriate time, under the rule, it will be in order for me to object to even the consideration of this amendment.

In deference to the Senator from Nebraska, and in recognition of the interest that this subject, understandably and naturally, commands in so many of our States, I am satisfied that it would be appropriate to afford an opportunity for the distinguished Senator from Nebraska to speak to his amendment. I wish to respectfully advise him that upon completion of the 15-minutes allotted under the unanimous-consent rule, I will be compelled to exercise my right to object. I would urge him at the earliest opportunity to seek consideration of this important matter before the appropriate vehicle in the Senate.

With that understanding, Mr. President, I reserve the remainder of my time.

Mr. CURTIS. Mr. President, I yield myself 5 minutes.

Mr. President, I do not believe there will be an objection to this amendment on the ground of germaneness. There is no general germaneness rule in the Senate.

Here is a very extreme emergency. In several States we have had a mass invasion of grasshoppers. Within the last 20 minutes a call went from my office to the appropriate State office in the capitol at Lincoln and asked for an estimate of the damages. They said they could come up with no exact figure, but it ran into the millions and millions of dollars.

A farmer by the name of Cliff Kusaie, of Brule, Nebr., in a telephone conversation reports that in his 50 years of farming he has never seen such a severe grasshopper plaque.

The EPA will bar any chemical that is effective. They recommended one. It cost this farmer $19.25 a gallon and did not do any good.

There is a chemical, called heptachlor, which is effective. State officials have recommended it. Professors trained in science and in the use of pesticides at the University of Nebraska have come to Washington and begged the EPA to permit it. What response do they get? None. They talk about they do not want to take any action without publishing something in the Federal Register, which will require weeks and weeks. In the meantime, individuals are being destroyed.

The grasshoppers are costing tens of thousands of dollars, eating up the corn and the beans.

We are resorting to the same thing we had to do to get the Alaska pipeline built. There are people down there in that agency who do not care anything about the economy of the United States. They were not concerned about our energy crisis. They fiddled and fiddled and finally the Congress had to say, "We are going to build the pipeline."

What I am asking the Senate to do today is to permit the use of heptachlor in the States of Colorado, Kansas, Wyoming, Oklahoma, and Nebraska in the ditches, on the margins of fields, and so on, in limited areas, for a period of 45 days.

Mr. President, this Government has done enough to damage and destroy agriculture. We faced a crisis this spring. This Government braced its feet and said, "We will do nothing to raise target prices or loan prices." The bureaus will not grant relief.

Does anyone want to take the responsibility of denying the Senate the right to vote on this amendment which would permit the use of a chemical that over the years has been used, which is effective, which would be a temporary thing to meet an emergency for 45 days, and limited in its use to five States? Furthermore, no one is going to use it unless they need it.

Mr. President, we may be dealing with an endangered species here. This total disregard by the Government of the United States for the welfare of farmers facing a disaster is something serious. We cannot have our private system of agriculture for long if we go on with that sort of treatment.

Mr. President, how much of my 5 minutes have I used?

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. CURTIS. Mr. President, I reserve the remainder of my time and yield 5 minutes to the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, first I would like to be added as a cosponsor to the amendment of the Senator from Nebraska, if he has no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the Senator from Nebraska has clearly stated the problem. We have an infestation of grasshoppers. It has spread in pockets throughout the range lands as well as milo, corn, sugarbeet, and alfalfa fields, and not only in the States mentioned by the Senator from Nebraska, but also the State of Texas.

I am wondering if, at the appropriate time, the Senator from Nebraska might want to add the State of Texas to the amendment.

Mr. CURTIS. I shall be happy to.

Mr. DOLE. The most serious areas of concern are eastern Colorado, parts of southwestern Nebraska, and northwestern Kansas. In addition to the grasshopper problem, we also have what we call a chinch bug problem. The farmers have made their complaints known earlier. They complained that EPA-approved pesticides—mostly Sevin-4 oil, carbaril, parathion, and malathion—are too expensive—they are about $3 an acre—and lacking in residual kill power, making several applications necessary.

As the Senator from Nebraska pointed out, most farmers are receiving less than the cost of production for their commodities and they cannot afford $3 to $6 or $9 an acre for these particular chemicals.

After some confusion, EPA has now determined that certain additional pesticides may be used even though they are not specifically registered for use against grasshoppers. This list includes three chlorinated hydrocarbons: Toxaphene, endrin, and lindane. Some farmers are now using these chemicals and getting better results. All together, about 20 chemicals can be used legally against grasshoppers, although most are only marginally effective.

As indicated by the distinguished Senator from Nebraska, the farmers would like to use heptachlor and that would be permitted in the amendment.

We have had actions taken by officials in the State of Nebraska—in fact, all the affected States—local officials and State officials. I should like to have printed in the Record at this point a copy of a telegram from the distinguished Governor of the State of Kansas, Robert Bennett, in which he expresses his disappointment to the officials of the Environmental Protection Agency for their failure to act expeditiously. They are now talking about 40 to 60 days.

There being no objection, the telegram was ordered to be printed in the Record, as follows:

TOPEKA, KANS.,
July 13, 1978.

Senator BOB DOLE,
Dirksen Senate Office Building,
Capitol Hill, D.C.

I am extremely disappointed at the insensitivity, as evidenced by this morning's meeting in Topeka, on the part of the Environmental Protection Agency to the insect emergency in Kansas and other States. I suggest that you immediately proceed with legislation in Congress to remedy this situation and to allow the use of now-restricted insecticides, with the appropriate safeguards, during such emergencies as we face today in the midwest. The world's food supply is too precious to be destroyed by a headstrong Federal agency.

Governor Exon of Nebraska and I this afternoon are preparing a resolution for introduction Friday at the meeting of the Midwestern Governors Conference supporting such action, we are working for conference support from other Governors.

Meanwhile, we are conferring with out own State Department of Agriculture officials on the possibility of making formal application for use of restricted pesticides and urge your support if it is filed.

ROBERT F. BENNETT,
Governor of Kansas.

Mr. DOLE. It just seems to this Senator that it is urgent, it is an emergency. Unless action is taken very soon, unless we can eradicate the infestation in the grasshopper population—three per square yard is considered safe. We now have a population reaching 8 per square yard and certainly, rangeland and crops are threatened.

The current population in these areas is running over 30 grasshoppers per square yard in some of the highly infested areas, much greater than what we might consider safe or even consider threatening.

The amendment offered today would allow the use of this chemical, heptachlor. It is reportedly available in sufficient supply to be used for no more than 45 days after enactment of this legislation, in a rigidly controlled application procedure, to eradicate this grasshopper infestation. Unless the use of this chemical is permitted for this limited time, fall feedgrains, soybeans, and sugarbeets will be threatened in a six-State area.

In addition, the wheat crop which is about to emerge from the ground this fall is threatened. We should remember, this is the major crop in the high plain area.

Heptachlor is currently authorized for protection against other insects in feedgrains and flax. Therefore, adequate supplies exist. Limited use of this chemical in these areas would enable our farmers to promptly stop this threat.

It seems to me that the Governors of two States bringing this request to the EPA Friday—they are threatened with a delay of from 40 to 60 days. If we could persuade the floor managers of this bill to let us add this amendment, I think we might save millions and millions of dollars in this six-State area. We might encourage the EPA officials to act more expeditiously when the Governors and others from Kansas and Nebraska present their request on Friday to the Environmental Protection Agency.

In addition, I might add that the Environmental Protection Agency has indicated they are not going to grant the exemption and this amendment will be helpful.

I thank the distinguished Senator from Nebraska for introducing his amendment.

Mr. WALLOP. Mr. President, I want to associate myself with the Senator's remarks about the bumbling stupidity that is depriving farmers and grains users of their livelihood over a silly argument as to whether this is the year to engage in grasshopper control. In my State, while they fiddle, Rome literally burns, because next year, the infestation will be that much greater; the problem will be that much more expensive for the United States. And this President seeks always to limit the drain on the Federal budget.

The Senator from Nebraska is asking for an immediate response to an immediate, real problem. For us to continue to fiddle and to allow these bureaucratic inefficiencies to get in the way of real response to a genuine problem is absurd.

I thank the Snator for yielding.

Mr. CURTIS. Mr. President, I yield myself 3 minutes.

Nebraskans have been battling the insects for weeks with all available chemicals. Nebraska's State agriculture department has already expended its entire emergency fund to help farmers pay for the repeated spraying of their fields. State officials have come to Washington to see the EPA because they want to be allowed to use a chemical with a residual capability. The chemicals now being used can kill grasshoppers on contact. However, the effect is gone in a day or two, and the dead insects are soon replaced by thousands of healthy, hungry ones.

EPA is being asked to allow limited use of a chemical such as heptachlor with residual properties only in limited areas such as road ditches and field margins, and only until the grasshoppers are beaten back to a manageable level.

Here is something significant: Regional EPA officials who have seen the situation firsthand are supportive of this request. Mr. President, unfortunately, the farmers in Nebraska and other parts of the Midwest do not have the time necessary to convince Washington of the seriousness of the situation. By the time the message gets through, the crops will be gone.

It is not only bureaucratic inefficiency, it is cruel and unjust for the EPA not to use all the power they have to act immediately; but they will not do it.

Mr. President, I ask unanimous consent that my amendment be amended to include the State of Texas.

Mr. Dole. If the Senator will yield, we are just advised that the grasshoppers are now reaching both Dakotas, North and South Dakota.

Mr. Curtis. I ask unanimous consent to amend my amendment to include Texas, South Dakota, and North Dakota.

The Presiding Officer. The Senator has that right.

The amendment was modified, as follows:

On page 2, line 3, after "Wyoming," insert the following "Texas, South Dakota, North Dakota,"

Mr. Curtis. I yield to the Senator from Kansas.

Mr. Dole. I only ask for time to ask unanimous consent to have printed in the Record at this time a letter from the administrator of the Animal and Plant Health Inspection Service, APHIS, in which he specifically discusses the problem in my State of Kansas.

I can say to other Senators who may have an interest that the problem is just as grave in Texas, Colorado, Oklahoma, and Nebraska; it is reaching Wyoming and North and South Dakota. I hope that perhaps we can end this infestation with prompt action now.

As the Senator from Kansas indicated just a few moments ago, if those managing the bill could be persuaded to let us add this to the bill, it might help some of our Governors who are coming to Washington and submitting their application to EPA on Friday if the Environmental Protection Agency clearly knew what the intent of the U.S. Senate is.

I thank the distinguished Senator from Nebraska for yielding.

I ask unanimous consent that the APHIS letter be made a part of the Record following my remarks.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. Department of Agriculture,
Animal and Plant Health Inspection Service,
Washington, D.C., July 14, 1978.

Hon. Robert F. Dole,
U.S. Senate, Washington, D.C.

Dear Senator Dole: Thank you for your telegram of July 11 informing us of the special grasshopper control meeting called by Kansas Governor Bennett at Topeka, Kansas, on July 13.

Representatives of this Department were present at the meeting. They described the Department's participation in grasshopper control. The focus of the meeting centered on the possibilities of lifting the ban on the use of certain persistent insecticides for grasshopper and chinch bug control. Representatives from the Environmental Protection Agency were on hand to respond to this question.

The Department is vitally interested in the current grasshopper situation, having participated in grasshopper work with the States and growers since 1934. This year we have shared in control programs on rangeland in eight States, involving a total of 724,000 acres.

While we cannot participate directly in control of grasshoppers in crops, we do provide technical advice wherever needed. By mutual agreement between the Department and the affected States, we withdrew from cropland control in 1950. Since then, grasshopper control has been a farmer responsibility, the same as for other general crop pests such as corn rootworms, green bugs, and alfalfa weevil.

It is encouraging that the State of Kansas has made funding assistance available to help their farmers and ranchers to combat grasshoppers in their cropland areas. The State Extension Service and the State Department of Agriculture appear to be fully alert to the situation and are providing assistance to growers to the extent possible.

The grasshopper situation in Kansas is reported to be light to heavy, but localized, in farming areas with the heaviest populations in southwestern counties. Protection of corn, soybeans, and alfalfa is needed in these areas.

We appreciate your interest in this important crop protection problem. A similar letter is being sent to Senator Pearson and Congressman Sebelius.

Sincerely,

F. J. MULHERN,
Administrator.

Mr. CURTIS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. CULVER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The time of the Senator from Nebraska has expired.

Mr. CULVER. Mr. President, I yield back the remainder of my time and I do so making the point of order that the amendment is not germane to the pending bill and should be ruled out of order by the Chair.

Under our unanimous-consent agreement there was such an understanding. This amendment is clearly not in order and I make that point of order at the present time.

The PRESIDING OFFICER. Under the unanimous-consent agreement under which the present bill is pending, it was agreed that amendments would have to be germane. This amendment does clearly, in the opinion of the Chair, introduce new matter and, therefore, is not germane.

The Chair sustains the point of order.

Mr. CULVER. Mr. President, I wonder at this time if the Senator from Wisconsin is prepared to go forward.

It is my understanding that Senator Baker is being called to the floor.

Mr. WALLOP. He is on his way to the floor.

Mr. CULVER. So perhaps we could start on that amendment.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

AMENDMENT NO. 1432

(Purpose: to add to the Act a new section: "Critical Habitats")

Mr. McCLURE. Mr. President, I have an amendment I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McClure) proposes unprinted amendment numbered 1432.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, line 23, insert the following: The Endangered Species Act of 1973 is amended by adding the following new section: "Critical Habitats"

SEC. 18. (a) Notwithstanding any other provision of this Act or of any other law, an action taken by any Federal department or agency involving the designation of any area or areas as critical habitats of endangered or threatened species shall be deemed to be a major Federal action significantly affecting the quality of the human environment requiring the filing of an environmental impact statement under the National Environment Policy Act of 1969: *Provided*, That in the opinion of the Secretary of Interior a satisfactory environmental impact statement under the National Environmental Policy Act of 1969 has not previously been conducted which will satisfy the intent of this section.

(b) Said environmental impact statement as established in subsection (a) of this section shall give equal consideration to all environmental, social and economic questions arising from the proposed designation of said critical habitat; and the Secretary of Interior shall be required to make all judgments resulting from said environmental impact statement taking into equal consideration all such environmental, social and economic questions.

(c) Until such time as said environmental impact statement is completed and utilized by the appropriate Federal department or agency in making said critical habitat designation no State or Federal department or agency (or judicial decision) can delay or deny, on the basis of said critical habitat designation, any loan, grant, license, permit or other such action.

(d) The provisions of subsection (c) of this section will not apply if, at the discretion of the Secretary of Interior, he determines any such loan, grant, license, permit or other such action will result in irreversible damage to said critical habitat that may result in the extinction of any endangered or threatened species.

(e) Following any determination of the Secretary of Interior pursuant to subsection (c) of this section, the Endangered Species Committee as established in Section 7 of this Act will, within 90 days of the Secretary's decision, make a determination of whether any loan, grant, permit license or any other such action will result in irreversible damage to said critical habitat that may result in the extinction of any endangered or threatened species. In making such determination, the Committee will review and take into consideration all available pertinent information, and, to the extent necessary, require additional information to be received for their review and consideration before such determination is made.

Mr. McCLURE. Mr. President, I will be very brief on this matter. It is not my intention to prolong the discussion unnecessarily. But the designation of critical habitat for endangered species can have a major impact upon the economy of certain areas.

My amendment would require that an environmental impact statement be prepared and filed prior to the designation of such critical habitat areas.

This subject is a subject of a bill which I have introduced, and it was also an amendment which I offered in committee which the committee rejected. At the time it was rejected in the committee, I indicated to the committee I would offer it again on the floor because I think this is a subject which ultimately cannot simply be ignored.

In the adoption of the amendment of the Senator from Utah (Mr. Garn) with regard to the simultaneous designation of critical habitat at the time endangered species are added to the list, there is a further complication to the procedural requirements.

I am not certain, Mr. President, that I am prepared to say I know how that would be resolved or am I certain I can say how to approach the question of requiring the designation of critical habitat to weigh all of the factors which must be weighed.

We in this debate have said so often that I hesitate to repeat it that I am not in favor of destroying the act. I am in favor of protecting endangered species. I do want this act to tilt in favor of protection of the species in case of any reasonable doubt.

We have tried to inject in this some judgment and some discretion for those instances in which there is an overriding concern and benefit to mankind that is greater than the protection of the particular habitat for particular species.

It seems to me, to be able to do that, to be able to discharge that responsibility, which we are saying should be discharged in every case, requires them to develop all of the information which would be required in an environmental impact statement.

Now, an environmental impact statement is complex. It requires a great deal of study, and it would take at least 13 months, I suspect, at a minimum to prepare an EIS on the designation of critical habitat.

It is not my desire to impose that kind of delay in every case, but, certainly, to impose that delay in the instance of the imminent destruction of species that needs the protection while an EIS is being prepared.

But I do believe the agency that makes the designation, that seeks the designation of a species as threatened or endangered, and seeks to set aside critical habitat, must ultimately be able to bear the burden of inquiry that they have considered not just the welfare of the endangered species, but the relative value of that minute subcategory with overriding considerations, if indeed, they exist.

I know some people read those words and say, "Well, it is simply a weighing of destruction of a species against an economic gain," and that certainly is not what I mean, and I do not think it is the meaning of the Endangered Species Act.

But there must be some kind of judgment imposed, as in the snail darter case, where we have 130 different varieties of snail darter. It is not the destruction of species which is being threatened in the Tellico Dam case. It is the minute variation of a species that has many different variations which is threatened, if at all.

I do not know how anyone can argue that we ought not have the best information possible before such a designation is made. Certainly, it is even more critically important for the designation of habitat than it is with respect to the addition of a species to the list, because the size, the scope, the contour, the extent of the habitat which is designated, is a matter of judgment, much more so than is the designation of the species or the addition of species to the list.

Mr. President, I know that the committee has had trouble with this suggestion, as have I, and the majority of the committee decided that they would not accept the amendment.

But I think the majority of the committee at the time they rejected the amendment recognized the validity of the arguments with respect to the necessity for developing information. It is in that spirit which I offer the amendment again today.

I would at this time yield to the Senator from Wyoming for his comments with respect to the amendment.

Mr. **Wallop**. Mr. President, on our time, I would have to oppose it, but not because I do not understand the concerns and the problems the Senator from Idaho speaks of.

The basic difficulty we have in accepting it is that it makes a requirement in each instance of designation of critical habitat that the provisions of NEPA will apply, that an EIS will be filed. It is possible that there will be many that will not be major Federal actions.

The Endangered Species Act is silent on it at the moment, and in its silence it surely does not prohibit suits to compel that environmental impact statements be filed under the provisions of NEPA if the action is determined to be a major Federal action.

I think it is a sounder way to proceed at the moment, particularly in light of the amendments which have been accepted on the floor, in requiring simultaneous designation of habitat at the same time of listing a species.

Otherwise we would have a situation in which, in every instance, the 13-month to 18-month to 24-month delay and the challengeable provisions of the environmental impact statement would become, as it were, the dominant factor in the consideration of the critical habitat at the moment. I do not think that would be the Senator's intent, and surely it would not be in the interest of the species. The subject is not closed in this Senator's mind.

The Senator from Idaho raises a good point. I am not really certain that it is a wise thing to require an environmental impact statement under the provisions of NEPA and the declaration that, in every instance, designation of a habitat as being critical is in fact a major Federal action.

Mr. **McClure**. Mr. President, will the Senator yield?

Mr. **Wallop**. I yield.

Mr. **McClure**. Mr. President, I do not think we are going to use all the time on either side, because I am persuaded that there is some difficulty in the adoption of this amendment. However, I want to focus for just a moment on the suggestion that the Senator has made, that the amendment would require an EIS in every instance and that might be burdensome; that the present law does not forbid an EIS requirement in those circumstances where it is a major Federal action; that the act is basically silent; and that it is possible that the requirement for an EIS on designation of a species or a habitat may require an EIS under existing law.

I want to underscore that, so that if I withdraw this amendment, as I intend to do, the Record will not indicate that, in the absence of the amendment, there is no possibility that an EIS is required; because I agree with the Senator from Wyoming that with no prohibition in the present law, it may be construed to be a major Federal action requiring an environmental impact statement, and that would have to be judged upon the facts of each case.

Mr. **Wallop**. I think that is correct. It would be a determination for the courts to make as to whether or not any given designation would be a major Federal action, and certainly not something that we could determine in any manner of detail here on the floor, in this kind of debate. The act is silent. It neither encourages nor prohibits an EIS requirement. I believe that is a matter that the courts will have to decide.

Mr. McClure. Mr. President, I believe that the amendment of the Senator from Wisconsin, which was offered and accepted yesterday, requiring an environmental impact statement to be filed upon the action of the committee established under this bill, is a constructive addition. While he was looking at primarily Federal projects under section 404, or similar projects, it does not necessarily confine itself to those, and it may indeed require an EIS in some conditions where an EIS would not now be required.

Mr. Wallop. If the Senator will allow me, I should like to clarify a point.

The Senator from Wisconsin will agree, I think—it was his amendment—that the environmental impact statement required under his amendment is not an impact statement on the section of the committee.

Mr. McClure. No. It is not, because the bill itself exempts the action of the committee from the requirement of an EIS. But it does say that an EIS must have been prepared before the committee can take its action.

Mr. Wallop. That is correct.

Mr. McClure. However, recognizing that only a Federal agency head has the right to submit a matter to the committee, there is a broad range of issues which never may reach the committee, because it is a very constrained and very limited group that ever will have the opportunity to be presented to the committee.

My point in mentioning this amendment was only from the standpoint that at least within that narrow range, we now would have a requirement for an EIS; but we have not made a positive requirement in the broader range that is not within the scope of review by the committee. It would be that broader range for which I would seek to find a solution.

However, recognizing not only the difficulties that were inherent in the amendment originally but also the original difficulties that have come to the fore as a result of the amendments adopted on the floor, it may be wise for us to see later how we can make this fit in without being unduly burdensome on some very minor matters that nevertheless could be taken care of without a major impact, but still leave it open to the possibility, under basic law, that an environmental impact statement may be required in suitable cases under the law now existing

Mr. Wallop. I thank the Senator. What the Senator suggests is not impossible, though I suggest to him that it will not be easy, either.

We will pursue it at his suggestion and direction, and that of others, as it goes along, to see if we can find some means by which a responsible solution to the problems he points out can be found.

Mr. McClure. I thank the Senator. I do not want to be understood to be abandoning the attempt, but only recognizing the condition in which we find ourselves today, and that it would be wiser to counsel together over a longer period of time and perhaps be able to find a solution to the problem that would be mutually agreeable.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3133

Mr. NELSON. Mr. President, I call up amendment No. 3133.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. Nelson) for himself, Mr. Brooke, Mr. Abourezk, Mr. Cranston, and Mr. Anderson, proposes an amendment numbered 3133:

On page 12, line 11, after "no" strike "reasonable" and insert in lieu thereof "feasible".

Mr. NELSON. Mr. President, I call up this amendment solely for the purpose of engaging in a brief colloquy with the distinguished Senator from Tennessee (Mr. Baker).

This amendment strikes the word "reasonable" that appears on page 12, line 11 of the bill and inserts in lieu thereof the word "feasible".

Although this amendment changes only one word of S. 2899, it is nonetheless a most important word. The section of the bill this language would change speaks to the grounds and criteria that the Interagency Committee must consider in determining that an exemption from the Endangered Species Act should be granted. The committee may grant an exemption from the law if the committee determines on the record that "(A) there is no reasonable and prudent alternative to such action;".

The term "reasonable and prudent" does not appear to have a legal meaning. It is not a term of art whose definition has been clearly litigated and defined.

The term "feasible and prudent" on the other hand, is a term of art. It is used in section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 1653(f)) and section 138 of the Federal Aid Highway Act of 1968 (23 U.S.C. 138). The term has been the subject of much litigation which eventually resulted in its definitive interpretation by the Supreme Court in the case of *Citizens To Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971). Thus, there is certainty as to its meaning which will facilitate the work of the Interagency Committee while discouraging unnecessary litigation. "Reasonable and prudent" has no such existing case law.

According to the existing case law, the word "feasible" as used in 23 U.S.C. 138 and 49 U.S.C. 1653(f) means, in effect, "consistent with sound engineering." The term "prudent" has been construed to mean "not presenting unique problems."

Therefore, if the grounds for granting an exemption were narrowed to "feasible and prudent" rather than "reasonable and prudent" as in the bill, the committee would have to determine that as a matter of sound engineering it would not be feasible to build the project in any other manner. The use of the term "prudent" is of secondary importance.

This bill breaks a good deal of new ground, much of this is undefined and will be in the subject of litigation if this approach becomes law. It seems to me only reasonable that we stick with known meanings and definitions whenever possible.

I note in reading the bill, on page 12, starting at line 8, that the committee may only grant an exemption for any action under subsection (e) of this section if it determines on the record that—then starting on line 11—(a) there is no reasonable and prudent alternative to such action.

We know from the Supreme Court decision what the words "feasible and prudent" mean. I am not aware of any interpretation of the meaning of "reasonable" in the phrase "reasonable and prudent." I understand that the Senator from Tennessee has a comment to make on that; if so, I will yield for that purpose at this time. Then I would like to ask the Senator two or three questions.

Mr. **Baker**. Mr. President, I thank the Senator, and I ask him to yield so that I can address myself to that point.

Mr. **Nelson**. I yield to the Senator from Tennessee.

Mr. **Baker**. I am, indeed, familiar with the term "feasible" as it has been defined by the courts in this general field. As a matter of fact, that term is used in section 4(f) of the Highway Act, in which has caused considerable controversy in my State of Tennessee with respect to the Overton Park Expressway in Memphis.

It is because of that and the interpretation that the court in that case that I feel I have some familiarity with the likely interpretation which might be applied in the future to the term "feasible" versus the choice by the committee of the language "reasonable and prudent."

As I understand the amendment which was offered by the distinguished Senator from Wisconsin the change to "no feasible and prudent alternative" would bring about what I believe is a fundamental change in the nature of the committee amendment. It would change one of the principal elements of congressional guidance given to the Endangered Species Committee in their consideration of exemptions from the requirements of the Endangered Species Act as now contemplated by this bill.

The committee bill provides that where there is "no reasonable and prudent alternative" to a proposed Federal action, relaxation of requirements of the Endangered Species Act is permissible.

But as I understand the amendment of the distinguished Senator from Wisconsin, his proposed amendment would apply a "no feasible and prudent alternative" standard to the decisionmaking process.

At first glance it appears that the difference between these standards is minimal. This might be true were it not for judicial interpretation of the "no feasible and prudent" test contained in section 4(f) of the Department of Transportation Act and in section 138 of title 23, United States Code, the so-called parklands provision. In the leading case applying section 4(f) the Supreme Court read that provision as denying the Secretary of Transportation authority to make wide-ranging balancing judgments. To limit the authority of the Endangered Species Committee in this manner would be contrary to the whole intent of the proposed amendments to the Endangered Species Act, offered by the distinguished Senator from Iowa and myself.

The value of the term "reasonable" is that it permits members of the Endangered Species Committee to consider a wide range of factors. It is the intent of the Envionment and Public Works Committee that the Cabinet-level panel established by S. 2899 in evaluating alternatives examine not only engineering "feasibility," but also environmental and community impacts, economic feasibility, and other relevant factors. In other words, the Environment and Public Works Committee believes that use of the term "reasonable" rather than "feasible" gives more flexibility to the Endangered Species Committee in its review of "irresolvable" conflicts arising under the Endangered Species Act.

Mr. President, this is my view of the material and operative divisions between "no feasible and prudent alternative" and "no reasonable and prudent alternative."

I urge that the Senate reject the amendment, with deference and respect to my colleague from Wisconsin, and carry out the clear intention of the managers of the bill and of the committee reporting the bill to make sure that there is flexibility far beyond the feasible test established in the Overton Park case and other litigation.

Mr. NELSON. Mr. President, if the Senator from Tennessee will yield for a couple questions, section 7(e)(2)(C) of the Culver-Baker amendment requires the Endangered Species Committee to determine whether the benefits of the proposed action clearly outweigh the benefits of alternative courses of action. Section 3(9) defines the term "alternative courses of action" to mean all alternatives, not just those that are limited to original project objectives and agency jurisdiction. I take this to mean that the Endangered Species Committee has a broad duty to consider all alternatives.

Is that the interpretation of the Senator from Tennessee?

Mr. BAKER. Mr. President, it is my interpretation, I might add, however, that in the colloquy between my distinguished colleague from Tennessee, Mr. Sasser, and the Senator from Iowa (Mr. Culver) on yesterday concerning this same point the question came up concerning the weight that the Endangered Species Committee should place on the percentage or stage of completion of a Federal activity being reviewed and thus while the Endangered Species Committee should consider all alternatives, as the distinguished Senator from Wisconsin suggests, this additional factor, that is, the stage and percentage of completion, as identified by Senator Sasser on yesterday, it seems to me must also be given weight in the Endangered Species Committee's considerations.

Mr. NELSON. Then I take it that the language of "all alternatives" certainly at least then would include all alternatives that are feasible in the sense of being consistent with sound engineering practices. Does the Senator agree with that?

Mr. BAKER. Mr. President, I agree with that. I think very clearly that "feasible" in the sense of engineering practice is well within the scope of the contemplation of this language, and I agree with that interpretation.

Mr. NELSON. Am I correct, then, in saying that the Culver-Baker amendment is not directing the committee to consider a narrower range of alternatives than it would consider if the standard were "feasible and prudent?"

Mr. Baker. No. Mr. President, we are not requiring them to consider a narrower range of alternatives. We are saying, however, that the term "reasonable and prudent" as distinguished from "feasible and prudent" gives them more flexibility than would be the case under "feasible" and that within that scope the committee may take an account objectives or alternates other than the original project and that they may consider as well the percentage or degree of completion of the project as identified by Senator Sasser on yesterday.

In a word, Mr. President, as to the point that I think the Senator from Wisconsin is reaching for, that is to say, can the Endangered Species Committee go into alternative possibilities other than or in addition to the original design, the answer is clearly yes.

But they also must take account of reality, as I see it, and that is the degree or percentage of completion of the project and the added flexibility that is given this factor in applying the reasonableness test as distinguished from the test of feasibility. I believe that we are not saying materially different things and I have no particular difficulty in suggesting to the Senator from Wisconsin that his view, which is more restrictive and less flexible than mine, is clearly included within my interpretation of the act.

Mr. Nelson. All right.

With that understanding and legislative history, I think it clarifies the phrase "reasonable and prudent" and gives it a good legislative history. So I am prepared to yield back the remainder of my time and withdraw the amendment.

The Presiding Officer. The amendment is withdrawn.

Mr. Nelson. Mr. President, will the Senator yield to me 1 minute off the bill so that I may make some insertions in the Record?

Mr. Culver. Mr. President, I yield to the Senator from Wisconsin a minute for that purpose.

Mr. Nelson. Mr. President, respecting the colloquy we just had, I ask unanimous consent to print in the Record a letter from the Office of the Solicitor, signed by James G. Webb, Associate Solicitor, Conservation and Wildlife; two memorandums from the American Law Division, the Library of Congress.

There being no objection, the material was ordered to be printed in the Record as follows:

Washington, D.C., *July 18, 1978.*

Hon. Gaylord Nelson,
U.S. Senate,
Washington, D.C.

Dear Senator Nelson: The Solicitor's Office of the Department of the Interior has, at your request, reviewed the language in S-2899 and notes that the "reasonable and prudent" standard it contains bears a strong resemblance to the "feasible and prudent" test of Section 4(f) of the Department of Transportation Act of 1966. 49 U.S.C. § 1653(f). We therefore wish to offer the following legal observations about this similarity.

The "feasible and prudent" standard in Section 4(f) of the 1966 Act has already run the gauntlet of litigation and was succinctly defined by the Supreme Court in the landmark case of *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971). The "feasible" half of that standard was held by the Court to delineate the range of alternatives that the Department of Transportation had to assess before it could fund the construction of a road through a park or other enumerated categories of public land. Basically, the DOT would be required to assess the prudence of all alternative routes that as a matter of sound engineering principles, were capable of construction.

The "reasonable and prudent" standard in S-2899 has not been incorporated into other statutes and thus lacks the certainty of judicial interpretation that the feasible and prudent" test has under Section 4(f). In addition, the "reasonable" half of the standard in S-2899 itself fails to convey the requirement of objectivity in determining the scope of alternatives to the project under review; it leaves unclear the range of alternatives to be considered by the Interagency Committee. It is true that elsewhere in the Culver-Baker bill there is language requiring the Committee to consider all alternatives to the project. It seems logical that all alternatives which are feasible from the point of view of sound engineering principles would certainly be included within the scope of the Committee's consideration. It therefore would add clarity and simplicity to the Committee review process to utilize the feasibility test under Section 4(f) since it already appears to be implicitly included within the concept of "reasonableness" under S-2899. That is (there is nothing in S-2899 which evidences an intent to prevent the consideration of alternatives which would be covered by the "feasible and prudent" test itself. Given that conclusion, there is little to be gained by adopting the "reasonable and prudent" standard in S-2899. Its outward appearance as some sort of new standard of review would only invite unnecessary litigation by environmental interests over its meaning.

I hope this analysis will prove to be useful in your deliberations on S-2899.

Sincerely yours,

JAMES D. WEBB,
Association Solicitor, Conservation and Wildlife.

WASHINGTON, D.C., *June 14, 1977.*

From American Law Division.

Subject: Applicability of Case Law Interpreting the Phrase "No Feasible and Prudent Alternative" in 49 U.S.C. Sec. 1653(f) to Interpretation of the Same Phrase in a Proposed Bill.

This memorandum responds to your request that the contents of our phone conversation on the topic noted above be committed to writing.

We discern no reason why one could not make an argument that the case law interpreting the phrase "no feasible and prudent alternative" as used in 49 U.S.C. Sec. 1653(f) could not reasonably be made applicable to use of the phrase in the bill forwarded for our consideration. The role envisioned for the phrase in the bill as a condition precedent for the taking of certain actions appears to be similar to the role played by the phrase in 49 U.S.C. Sec. 1653(f). Thus, the bill provides that where there is "no feasible and prudent alternative" to constructing a project at its intended site, the bar of the Endangered Species Act against jeopardizing an endangered species or its critical habitat shall not apply—*i.e.*, if "no feasible and prudent alternative," then some environmental harm will be tolerated. Section 1653(f) provides that where there is "no feasible and prudent alternative" to constructing a highway project at its intended site, the bar of the Department of Transportation Act against use of public parkland for such purposes shall not apply—once again, if "no feasible and prudent alternative," then some environmental harm will be tolerated. Furthermore, the case law evolved in litigation under sec. 1653(f), dealing as it does with highway construction, seems readily transferable to the Federal public works projects with which the proposed bill deals.

The fact that a body of case law interpreting a previous enactment could be used in interpreting a subsequent enactment does not mean that a court will necessarily do so, of course. While courts often indulge the presumption that a legislature is aware of existing statutes when enacting new ones, the fact that the Department of Transportation Act was enacted over a decade ago in the context of an unrelated issue could be viewed by a court as undermining the value of that Act for interpretation of the proposed amendment to the Endangered Species Act.

Whatever the probability that a court would make the connection between the two enactments solely on the basis of similarities of phrasing, it is certain that the probability would be greatly increased by Congress making its intentions express. This could be done by defining "no feasible and prudent alternative" in the bill itself. A recent example of an express definition in terms of an earlier use of a term is the definition of "wilderness" in section 103(a) of the Federal Land Policy and Management Act of 1976, Pub. Law 94-579:

"The term 'wilderness' as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act" (78 Stat. 809; 16 U.S.C. 1131-1136).

An alternative to express definition in the statute would be to include a statement to the desired effect in a committee report accompanying the proposed bill. In either event, you may wish to specify whether "no feasible and prudent alternative" as used in the bill is to be interpreted in accordance with the case law under sec. 1653(f) as it existed at the time of your bill's enactment, or as it continues to evolve in litigation under sec. 1653(f).

ROBERT MELTZ,
Legislative Attorney.

WASHINGTON, D.C., *April 8, 1977.*

From American Law Division.

Subject: Case Law Interprettion of the Phrase "No Feasible and Prudent Alternative" in 49 U.S.C. sec. 1653(f) and 23 U.S.C. sec. 138.

In response to your request on the subject noted above, enclosed are excerpts from a pertinent ALR annotation: "Construction and Application of Sec. 4(f) of Department of Transportation Act of 1966 (49 U.S.C. sec. 1653(f)), As Amended, and Sec. 18(a) of Federal-Aid Highway Act of 1968 (23 U.S.C. sec. 138)," 19 A.L.R. Fed. 904 (1974).

The discussion below reviews the case law developed since the 1974 publication of the above annotation, case law largely affirming and elaborating the annotation cases.

In the leading case noted in the annotation, *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402 (1971), the Supreme Court interpreted the term "prudent" in light of the statute's overall purpose of protecting parkland, holding that—

"The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes."

At 413. This interpretation, the court stated, requires that the Secretary of Transportation have only a small range of choices to make, rather than a wide-ranging authority to balance competing interests. Citing and applying this language is the decision in *Environmental Defense Fund* v. *Brinegar*, 6 ERC 1577, 4 ELR 20534 (E.D.Pa. 1974), the court concluding that—

"It is difficult to draw any inference but that the Secretary did not fully appreciate the narrow constraints within which his authority was to be exercised when he approved the use of 42 acres of Saucon Park for the southern bypass."

Also relying on the *Overton Park* view of "feasible and prudent" is Brooks v. Coleman, 518 F.2d 17 (9th Cir. 1975), in which the court found a given alternative infeasible as a result of its involving several "truly unusual factors":

"The additional impact created by the viaduct on the . . . picnic area and nature trail (also a 'parkland' protected under the Department of Transportation Act), the absence of examples of successful use of the [alternative in question] in the United States, the intensified problems of icing and snow removal . . .; and the unusual safety problems that would be presented during the construction of the overhanging viaduct structure."

At 19-20.

In *Brooks* v. *Volpe*, 380 F.Supp. 1287 (W.D. Wash. 1974), an earlier phase of the litigation noted above, the court held unequivocally that an alternative highway routing which itself makes use of lands protected by the Department of Transportation Act is not a "feasible and prudent alternative." An authority, the court cited the annotation-discussed case of *Finnish Allatoona's Interstate Right, Inc.* v. *Brinegar*, 484 F.2d 638 (5th Cir. 1973).

In *Coalition for Responsible Regional Development* v. *Brinegar*, 518 F.2d 522 (4th Cir. 1975), the court was faced with an alternative that had been held infeasible by the district court largely because of a State law blocking financing of the alternative. The circuit court reversed, stating:

". . . the inability of West Virginia to finance the construction of the bridge from the proceeds of the sale of bonds heretofore authorized, even if that inability be established under State law, is not alone a valid reason to justify the conclusion that the Lewis Hollow site is not a feasible and prudent alternative . . . To hold otherwise would permit a state, by self-imposed restrictions, to nullify the declared purpose of Congress that parkland not be used for nonpark purposes unless there is no feasible and prudent alternative. There is in this record no showing that West Virginia could not finance construction of the bridge from sources other than the proceeds from the sale of these bonds."

* * * * * * *

"We draw this teaching from the portion of the opinion in *Overton Park* [indicating] that cost is a subsidiary factor in all but the most exceptional case (from which we infer that a preferred form of financing is also subsidiary) . . ."

Not mentioned in the annotation, but possibly relevant, is the decision in *Arlington Coalition on Transportation* v. *Volpe*, 458, F.2d 1323 (4th Cir. 1972). There, the court addressed the effect of sections 4(f) and 138 on projects ongoing at the time of enactment:

"Congress did not intend that all projects ongoing at the effective date of the Acts be subject to these sections. At some stage short of completion the costs already incurred in a project could so outweigh the possible benefits of altering or abandoning the proposed route . . . that because of the stage of progress alone "no feasible and prudent alternative to the use" [of parkland] would exist and "all possible planning to minimize harm would have been done."

However, the court emphasized that in light of the protective policy declared in sections 4(f) and 138, and the National Environmental Policy Act, sections 4(f) and 138 are applicable to a project—

"Until it has reached that stage of progress where the costs of altering or abandoning the proposed route would *certainly* outweigh whatever benefits might accrue therefrom, and that doubts about whether this stage has been reached must be resolved in favor of applicability." (Emphasis in original.)

At 1335.

ROBERT MELTZ,
Legislative Attorney.

The PRESIDING OFFICER. Are there further amendments to be proposed?

Mr. CULVER. Mr. President, it is my understanding that there is one remaining amendment.

Mr. WALLOP. There are other Senators who have amendments.

Mr. CULVER. In any event, Senator Scott is now apparently ready to request the consideration of his amendment. I would then hope we could move to passage as soon as possible. We will try to make every effort to accommodate those Senators who have amendments pending.

Mr. SCOTT. Mr. President, I have 12 different amendments to the bill, all of which I believe are meritorious.

The PRESIDING OFFICER. Does the Senator from Virginia now offer his amendment?

Mr. SCOTT. I have some time on the bill, Mr. President. I was just making that statement as a prelude to offering an amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. I have the time in my own right.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SCOTT. Mr. President, even though I do have these 12 amendments, the leadership on both sides of the aisle, the managers of the bill, have been most kind and cooperative. My efforts to have an amendment adopted which they oppose have not been successful.

AMENDMENT NO. 3234, AS MODIFIED

(Purpose: To authorize exemption from Endangered Species Act in certain cases involving critical military installations)

Mr. SCOTT. Now, Mr. President, I call up my amendment No. 3234. I ask that the amendment at the desk be modified, as it has been changed.

The Presiding Officer. Will the Senator send a copy of the amendment, as modified, to the desk?

Mr. Scott. I do, Mr. President.

The Presiding Officer. The amendment, as modified, will be stated.

The assistant legislative clerk read as follows:

The Senator from Virginia (Mr. Scott) proposes an amendment numbered 3234, as modified.

Mr. Scott. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

Mr. Scott. Mr. President, this amendment is one which relates to highly critical national defense projects. The original amendment was a little bit stronger and more to my liking, but in an effort to compromise and to have the amendment accepted, it now reads as follows:

On page 9, between lines 16 and 17, insert the following:

(14) Notwithstanding any other provision of this Act, in any case in which the National Security Council determines that the failure of the Committee to grant an exemption from the requirements of subsection (a) of this section to the head of a Federal agency in connection with any Federal action involving a critical military installation would have an adverse effect on the security of the United States, the National Security Council is authorized to notify the Committee, in writing, and upon the receipt of such notice the committee shall give immediate consideration to such determination.

Mr. President, as I say, I feel something like this is important. Suppose a bird or some endangered species was in front of an intercontinental ballistic missile. They could not release that missile. To me that would be a ridiculous offense.

I do not believe any commander worth his salt would pay any attention to the Endangered Species Act. I think he would go ahead and release the missile, but he would be disobeying the law and he would be subject to a fine of $20,000 and imprisonment for up to a year.

I think a lot of portions of this bill are utterly absurd. Without this amendment, I believe that it would be unreasonable. I hope the amendment will be accepted by the managers of the bill.

Mr. Culver. Mr. President, I appreciate the opportunity on behalf of the committee to say that this is acceptable. The committee has had an opportunity to discuss it with the Senator from Virginia. I think it is extremely important, as to actions which do involve, as the Senator has suggested, matters of highly sensitive and critically important national security consideration—installations of that character. Certainly before decisions are made in this area, we should have the opportunity to have the counsel and the recommendations as to the importance of these actions on our national security.

I thank the Senator for offering this amendment and we will accept it. I think it has been cleared on the other side.

I yield back my time if the Senator is ready.

Mr. Scott. I appreciate the comments of the distinguished floor leader of the bill. I yield back my time.

Mr. Culver. I yield back the remainder of my time. I ask for the vote.

The Presiding Officer. The question is on agreeing to the amendment of the Senator from Virginia.

The amendment was agreed to.

Mr. DOLE. Mr. President, I had discussed a possible amendment with the floor leaders of the bill and, after a thorough discussion, have determined not to offer the amendment. At this point, so that perhaps the other body might at least be apprised of the idea that we thought might be an improvement in the composition of the committee, I ask unanimous consent that followinng my statement, there be printed a copy of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOLE. Mr. President, S. 2899 mandates the formation of an Endangered Species Committee, which would resolve conflicts between Federal projects and endangered animals and plants. After determining that negotiations, as required by the 1973 act have been carried out in good faith, the committee is responsible for either granting or denying exemptions to the act.

The Senator from Kansas favors this approach. It offers the potential for a balancing of viewpoints, both pro-environmental and prodevelopment. It insures that any committee decision will be tempered by dissent.

COMPOSITION OF COMMITTEE

The Senator from Kansas is, however, concerned about the composition of the Endangered Species Committee. In addition to the Governor, it will include three Cabinet Secretaries, the Secretary of NOAA, the Administrator of the Environmental Protection Agency and the Chairman of the Council on Environmental Quality. It seems that by loading the committee with bureaucrats, all with a vested interest in the outcome of the conflict, we are almost guaranteeing that the committee decision will be neither objective nor in our best interest. It is difficult to imagine the representative of the Department of the Army voting against a Federal project, when more than likely it will be his own Corps of Engineers constructing the project. On the other hand, it would be only natural for the Secretary of the Interior and the EPA administrator to favor the preservation of a species while giving less than full consideration to the merits of a public works project.

Mr. President, one of the advantages of the Baker-Culver amendment is that it takes these sort of decisions out of the court system, and has them handled by a group better trained to adjudicate matters regarding the value of a plant or animal species, or the cost-benefit analysis of a reservoir or highway. I applaud these goals and my amendment, if adopted, will strengthen this principle.

DOLE PROPOSAL

I propose that, rather than having six bureaucrats serve on the Endangered Species Committee, those six departments and agencies submit to the President lists of candidates from the private sector for each slot on the Committee. The President would nominate one member from each of the six lists, subject to confirmation by the Senate. The members would serve one 4-year term each, and would be paid at a level equal to that of other Government consultants. While this will increase the expenses of the Committee marginally, I believe that the $750,000 authorization in S. 2899 is sufficient to absorb this modest increase.

OTHER EXAMPLES

Mr. President, my idea is not a new one. Numerous Government commissions and councils work along exactly these lines. These include the Advisory Commissions on Intergovernmental Relations, the Pension Benefit Guarantee Corporation, Indian Education, and the U.S. Metric Board. The finest example, however, is the Marine Mammal Commission.

In the 92d Congress, the Marine Mammal Commission was formed in just this manner. Since that time, the Commission has worked remarkably well. Contrary to the claims of those who opposed it at the time, it has not resulted in a mammoth bureaucracy, but in fact has operated for the last 5 years with a full-time staff of only 10. This year's budget request from the Commission was 10 percent below last year's. It is the Senator from Kansas' belief that our experience with this Commission offers every reason to believe that the Endangered Species Committee will prove just as useful.

EXPERTISE AND OBJECTIVITY

Mr. President, the advantages of this amendment are several. Requiring members to be drawn from the private sector will insure that Committee decisions are made by experts in ecology, engineering, and social planning, rather than by a bureaucrat. Committee members, who would be limited to one term, would surely make decisions with more objectivity and independence than a Government employee eager to feather his cap, or that of his department.

SAVINGS OF TAX DOLLARS

Lastly, Mr. President, my amendment has a potential savings of millions of tax dollars. The Environment and Public Works Committee estimates that the number of major conflicts, like the Tellico Dam case, will dramatically increase in the near future. The committee concept will take these cases out of the court system and have them handled by a body tailormade to consider them. This will greatly reduce the cost and length of such conflicts, while removing the burden from the court system.

Mr. President, I believe that this measure includes appropriate safeguards for plants and animals threatened with extinction, while allowing a mechanism whereby this goal can be weighed against the need for development. Passage of my amendment will insure that the decisions of the Endangered Species Committee will be intelligent, unbiased, and in our best interest.

The Senator from Kansas is aware of the amount of time spent on the endangered species bill. After this bill is disposed of, it must still go to conference with a House bill, yet to come out of committee.

It is my understanding that during markup of S. 2899, the committee considered an approach similar to the one I propose. Furthermore, it is my impression that considerable sentiment exists in the Senate for this type of alteration.

Mr. President, I shall not offer my amendment at this time, if I might respectfully encourage the floor leaders of this bill to investigate this option in conference with the House.

Exhibit 1

On page 4, beginning with line 3, strike out all through line 18 and substitute the following:

"(A) The Governor of the State which is affected by the action for which an exemption is sought (or in the case of an action affecting more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee as determined among such Governors).

(B) The remaining six members shall be appointed by the President. The President shall make his selection from lists submitted to him by the Secretary of Agriculture, the Secretary of the Army, the Secretary of the Interior, the Secretary of the Smithsonian Institution, the Chairman of the Council on Environmental Quality, and the Administrator of the Environmental Protection Agency, of individuals knowledgeable in the fields of ecology and resource management, and who are not in a position to profit from their actions as members of the Committee. The President shall select one member from each of the six lists, subject to the advice and consent of the Senate. No member of the Committee may, during his period of service on the Committee, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(i) The term of office for each member shall be four years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(ii) The President shall designate a Chairman of the Commmittee (hereafter referred to in this chapter as the "Chairman") from among the members he appoints.

(iii) Members of the Committee, except the Governor of any State, shall be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of Title 5, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in Government service employed intermittently."

On page 4, strike lines 19 and 20.

On page 4, line 21, strike "(B)" and substitute "(4)".

On page 5, strike lines 3, 4, 5 and 6, and substitute the following:

"(5)(A) Seven members of the Committee shall constitute a quorum for the transaction of any function of the Committee. The Governor of the affected State may designate a representative to act in his stead."

On page 5, strike lines 14 and 15.

On page 5, line 16, strike "(D)" and substitute "(C)".

On page 5, line 18, strike "(E)" and substitute "(D)".

On page 9, strike line 18 and substitute the following:

"the confirmation by the Senate of a majority of the members identified in (3)(B), such members shall".

The Presiding Officer. Are there further amendments?

Mr. Scott. Mr. President, I have a motion to recommit the bill, S. 2899, to the Committee on Environment and Public Works, with instructions to the committee to consider such amendments thereto as will give priority to the welfare of mankind over the protection of fish, wildlife, and plants.

Mr. Culver. Will the Senator yield just on this point?

Mr. Scott. Yes, of course.

Mr. Culver. Mr. President, I should like to advise the Senator from Virginia that it is my understanding that we have at least one more

Senator who does have an amendment to offer. I wonder if he wants to withhold that motion to recommit until completion of that amendment? It will be more properly in order at that time, although I know it is in order at any time.

Mr. Scott. Mr. President, let me take just a minute to explain this. Then I am going to withdraw the motion.

Mr. Culver. I thank the Senator.

Mr. Scott. Mr. President, that has been the thrust of the argument that I have been making since the beginning of consideration of this bill. I have this motion. The only reason—perhaps the only two reasons—that I do not propose to push this motion are: One, because of the kindnesses that have been shown by the floor managers of the bill; and also because of the lickings they have given me on the amendments where they did not agree with me. I do not have much hope that I would be successful if I offer the motion.

I do think, Mr. President, that when we have any legislation that does not first give consideration to the rights of the citizens of the United States, to the human species, we are going in the wrong direction. I fear for the future of our country when we let environmental constraints, when we let constraints of various kinds that are not related to the people, take precedence over the welfare of the public.

Mr. President, I withdraw the motion.

The Presiding Officer. The motion of the Senator from Virginia has been withdrawn.

The Senator from Idaho.

AMENDMENT NO. 1434

(Purpose: Removing certain condemnation authority)

Mr. McClure. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McClure) proposes an unprinted amendment numbered 1434.

Mr. McClure. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The Presiding Officer. Without objection, it is so ordered.

At the end of the bill, add the following new section:

Sec. 6. (a) Section 5 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1534), is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding any other provision of this Act or any other law, the Secretary shall have no authority to acquire, by condemnation, any lands, waters, or interest therein, for purposes of this Act.".

Mr. McClure. Mr. President, I have offered this amendment only for the purpose of drawing attention to a problem which does not yet exist, but is going to exist. The potential for harassment is very apparent. The potential for substantial distortion of the economy in various places and possible injustice is evident.

Mr. President, the amendment which I have sent to the desk would remove condemnation authority for the purposes of acquiring critical habitat. I say that it does not now exist as a major problem because, as a matter of fact, my information is that they have exercised the right of condemnation only twice. In one of those two instances the exercise of condemnation was a friendly lawsuit in order to clear up the title to the land in question. The other was with respect to the habitat for the bald eagle under circumstances in which I am sure most of us would have found it justifiable to protect the habitat and to use that power of condemnation.

But with a growing list of species that will be added to the endangered or threatened species list, with the expansion of the great number of plants and insects that will be going onto the endangered species list, the potential for the acquisition of private property through the condemnation power is very large.

I am very much concerned that the Congress express itself at the earliest possible date to restrict the potential for an overextensive use of the power of condemnation and to signal very clearly that if the power of condemnation is used excessively that Congress is prepared to act to limit or to remove that power.

I think the administrative agencies must be put on notice that the Congress is not simply unaware that the potential exists, but is very much aware, but because of the fact that it has been used with restraint, it is not now a problem and does not need to be acted upon now, but, if it does become a problem, Congress will act very quickly and very positively in those instances.

Mr. SCOTT. Will the Senator yield?

Mr. McCLURE. I am happy to yield to the Senator from Virginia.

Mr. SCOTT. Mr. President, I remember some 20 or 30 years ago when I was an attorney in the condemnation section of the Department of Justice that under Federal law there was a provision under which land could not be taken under the power of eminent domain, either for this purpose or for some closely related purpose, and time causes the exact substance of the bill to escape me.

I had an amendment that I intended to offer and the floor manager of the bill talked me out of it. So I did not offer it.

But I do have sympathy with the proposal that the distinguished Senator from Idaho has just expressed. I think he would have others that would agree with him because we are talking about forcefully, against the will of the individual citizen, taking his property.

Now, he would receive just compensation. But sometimes that is not an adequate substitute and he might prefer to keep his property rather than to give it to the birds.

I commend the distinguished Senator.

Mr. McCLURE. I thank the Senator from Virginia.

There is in the law now the authority to protect the endangered species. Condemnation is not necessary to protect the endangered species. They can be protected without the condemnation of the land.

It may very well be that the landowner would prefer to continue to own the land subject to the restrictions of protection that are imposed, rather than having his land condemned and transferred out of his ownership forever.

The endangered species might get removed from the endangered species list or, indeed, it might become extinct, some changed circumstances which would remove the land from the burden and then restore it to his full use if he still owned it.

But if it has been condemned by the Government for this purpose, it is condemned forever and the property owner would have no possibility of recovery of that land in the event it was no longer needed for that purpose.

As I said, Mr. President, this has not been abused. My reason for offering the amendment at all is simply to point to the possibility for abuse and to provide a kind of red flag for the agencies that Congress is going to be watching it very carefully and if there is any overextensive use of it, Congress, in all likelihood, will move very promptly to limit or remove this authority.

I am happy to yield to the Senator from Iowa.

Mr. CULVER. I think the purpose and intent of the Senator's amendment, the extent to which he suggests, does send a signal to the Fish and Wildlife Service that we are going to be extremely sensitive to how or what degree of care and consideration they give, under their existing authority and the right of eminent domain, to acquire lands for critical habitat.

In some instances, as the Senator knows, a case is possible in which there is a friendly condemnation, as opposed to one requiring legal eminent domain action.

It is my understanding that every effort is made by the Fish and Wildlife Service to reach agreement with the landowner, because these condemnation situations are extremely expensive. They are never less than the appraised valuation. Awards reportedly have been as high as 300 percent of appraised value. I think they also try to avoid condemnation because of the added time and expense that are required. However, I believe this is authority that could be abused.

With respect to the suggestion the Senator makes that the subcommittee take a look at overall policy with respect to Fish and Wildlife Service rather than dealing with it here separately, we have never, to my knowledge—perhaps the Senator from Idaho can correct me—we have never, as a committee or a subcommittee, carefully reviewed this. That is something that might be appropriate as we go forward—an examination of the overall policy, rather than trying to deal with it separately here.

Mr. MCCLURE. The Senator from Iowa is correct. To my knowledge, we have not looked at that policy question. We deal with it every time it passes by us, in much the same fashion that we do here today, saying that it is a potential problem, we should take a look at it, and the agency should know that we are watching it very carefully.

I am reminded, Mr. President, of the restrictions that are imposed upon agencies by an understanding that is not written into the law, that they will restrain themselves in the use of authority; and then, after a period of time, they forget that, or the people who knew of that understanding leave, and suddenly they are back to the problem that was restrained by the understanding.

Mr. CULVER. With all due respect to the Senator, I would like to think that the work of our subcommittee has made it very clear to the Fish and Wildlife Service that we are interested in what they are doing, and that we are not necessarily uncritical of every aspect of their activity. If they have someone in their employ who reads the legislative history of this debate, which I assume they will—tomorrow morning, I hope—they will be wise enough to make sure that the very appropriate expressions of concern that the Senator has made on this occasion are respected. There are more formal ways, through congressional oversight, as the Senator well knows, by which we can more systematically review this policy.

As I said, it has been useful to give this reminder, and we will be watching it carefully.

It is important that our staffs be sensitive to it. We should make sure that we are properly informed as to what the practices are to guard against the kind of abuses to which the Senator is sensitive.

Mr. McClure. I thank the Senator from Iowa, and I agree with him entirely. I appreciate the support and concern he has shown for this problem, or this potential for a problem.

I do not think any one of us wants it to become a problem. We want to be able to say 2 years, 5 years, or 10 years from now that it has not been a problem and that there has been no abuse. The only way we will be able to say that is that the agencies look at it with the knowledge that we are looking at it very carefully and that we are going to try to balance the equities as we see them, in a sensitive regard for the rights of citizens as well as the implementation of this law.

I thank the Senator for his contribution.

Mr. President, I withdraw the amendment.

Mr. Culver. I thank the Senator.

The Presiding Officer. The amendment is withdrawn.

Mr. Wallop. Mr. President, how much time remains on the bill?

The Presiding Officer. Seven minutes remain to each side.

Mr. Wallop. Mr. President, I yield 3 minutes to the distinguished Senator from Vermont.

Mr. Stafford. Mr. President, I appreciate the Senator from Wyoming yielding this time to me.

First, I compliment the distinguished Senator from Iowa (Mr. Culver) and the distinguished Senator from Wyoming (Mr. Wallop) for the fine job they have done as the comanagers of this important piece of legislation from the Committee on Environment and Public Works. They have done a fine job, and I appreciate it, as I am sure all our colleagues do and the country will.

Mr. President, I have taken this time today particularly because I want to make a few brief remarks—indeed, all too brief—to express my admiration and commendation of the chairman of the full Committee on Environment and Public Works, the distinguished Senator from West Virginia (Mr. Randolph). This bill, like so many others, is a result of his strong and effective leadership.

In my 18 years as a Member of Congress, I can frankly say that I have never served with a chairman who has been more considerate of the members of his committee than Jennings Randolph; or one who has been more responsive to the concerns of all the members; or one who has shown more interest in effective legislation. Indeed, I cannot imagine any chairman surpassing the senior Senator from West Virginia in those regards.

When confronted with a problem, Jennings Randolph responds with effective legislation, not a partisan fight. It is this spirit that gets things done; a spirit that produces results, not bickering. Jennings Randolph listens with genuine concern and interest to every member, no matter how junior, and without partisan regard. He never forces a vote before everyone has had the opportunity to participate fully and present views. Perhaps his fairness can best be judged by the fact that whether he wins or loses, he does so with graciousness and generosity.

Mr. President, Jennings Randolph is a truly outstanding chairman of the Committee on Environment and Public Works. It is a great and distinct honor for this Senator from Vermont to serve with him. Senator Randolph graces this Chamber.

Mr. President, I thank the Senator from Wyoming for yielding time to me.

Mr. WALLOP. Mr. President, I thank the distinguished ranking minority member of the Committee on Environment and Public Works, not only for his remarks about the chairman but also for his efforts in behalf of the minority, as we seek to wrestle with the problems that come before the committee.

I also thank Senator Culver and the majority staff and the minority staff, whose services have been most useful and most helpful from the very inception of the hearings on this bill to the moment, when we are about to bring the deliberations on it to a close in the Senate. It has been a pleasure working with them.

I believe that much needed improvements in the bill and the act have been made. A step toward flexibility, where none existed, and a process for arriving at a decision, where none existed, have been achieved in a most responsible manner.

With that, Mr. President, I thank Senator Culver, and I yield back the remainder of my time.

Mr. CULVER. Mr. President, I also express my appreciation to the staff. Both the majority and minority staffs have worked hard and conscientiously over a period of a year in the development and production of much of the work that has gone into the last 2 days. They are George Jacobson, Kathy Korpon, Dick Oshlo, Patty MacDonald, Jim Range, Phil Cummings, and Mike Choukas.

I also express my admiration and gratitude to the distinguished Senator from Wyoming, without whom, frankly, this legislation could not have been developed successfully. His contributions throughout the consideration of this measure have proven to be invaluable, and his work on the floor during the last 2 days is self-evident in that regard.

Mr. MUSKIE. Mr. President, I commend the chairman of the Resource Protection Subcommittee, Mr. Culver, for his efforts in developing and reporting the bill before us. I recognize the difficulty of reconciling the critical interests involved here. The potential conflict between priority national goals and the very existence of irreplaceable species is not pleasant and provides mortals with little sound foundation for judgment. The committee bill should help us avoid such confrontations as much as possible and assure that when such confrontations are unavoidable they will be resolved at the highest levels of the executive branch.

I doubt that there can be a perfect resolution of the conflicts with which we are concerned here today. The bill before us attempts to bring the best resources of the Government to bear on the exercise of the best judgment of Cabinet-level officials. I do not envy the task of the Endangered Species Committee but an easier or more attractive solution to this dilemma has not been presented.

I think it would be appropriate in the context of debate on these amendments to the Endangered Species Act to relate the ongoing efforts to resolve potential problems between the Dickey-Lincoln hydroelectric and flood control project in Maine and a plant, the Furbish lousewort recently listed as an endangered species by the U.S. Department of the Interior Fish and Wildlife Service.

The Furbish lousewort was for many years considered an extinct species until extensive studies of the upper St. John Valley, conducted in preparation for the environmental impact statement on the Dickey-Lincoln project, discovered several colonies of the plant along the bank of the St. John River within the area that will be impounded by Dickey Dam. A potential conflict between the Endangered Species Act and Dickey-Lincoln project was immediately apparent and was frequently referenced by individuals and groups who opposed the Dickey-Lincoln project for other reasons.

Recognizing the potential conflict, the Corps of Engineers, even before the Furbish lousewort was officially listed as an endangered plant, began informal conversations with the U.S. Fish and Wildlife Service to attempt to avoid conflict. The corps launched investigations to locate additional colonies and to determine habitat requirements for the plant. Their efforts were successful and additional colonies of the plant were discovered outside the impoundment area and it appeared that the plant could be transplanted or propagated by seed to other suitable habitat. With this groundwork laid it was not long after the plant was officially listed as an endangered plant, that the Fish and Wildlife Service recommended a conservation program "to resolve the Furbish Lousewort/Dickey-Lincoln Conflict." In the announcement of the proposed conservation program the Fish and Wildlife Service commended the corps for its efforts to avoid conflict. I ask unanimous consent that the announcement of the recommended program and related correspondence from the Director of the Fish and Wildlife Service be entered in the Record at the conclusion of my remarks.

Mr. President, the announcement by the Fish and Wildlife Service is not the final word on the potential conflict between the Furbish lousewort and the proposed Dickey-Lincoln Dam. The Corps of Engineers is now reviewing the recommendations for mitgating action to determine their appropriateness, feasibility and cost. As the Fish and Wildlife Service noted the corps is continuing its efforts to find means of preserving the Furbish lousewort while proceeding toward construction of Dickey-Lincoln. We are perhaps fortunate in the case of Dickey-Lincoln that only a portion of the habitat for the Furbish lousewort is threatened by the Dickey-Lincoln project and even those threatened colonies can apparently be transplanted or propagated by seed in alternate suitable habitats. Ironically enough, it might happen that construction of the Dickey-Lincoln project, will enhance the prospects for survival of this plant thought extinct before the project was conceived.

Mr. **Brooke**. Mr. President, I confess I view it as a tragedy that these amendments have come before the Senate at all. We are engaged in the ludicrous undertaking of revising an act which works. Hundreds of potential conflicts between projects and endangered species have been resolved in good faith interagency consultations. This act is not inflexible or intransigent. Human needs and other species' needs have been shown to be reconcilable in all but two cases which went to litigation. And those two cases, one of which is, of course, the Tellico Dam, could probably have been worked out as well, had the agencies involved been willing to try to compromise, as in all the other cases. As TVA's new chairman, David Freeman, has readily admitted, TVA's past refusal to acknowledge the Department of the Interior's authority under the act put insurmountable obstacles in the way.

And there is no reason to think future projects are more threatened than past ones. It is, I confess with mixed feelings that I note the Dickey-Lincoln Dam will not be held up for the Furbish lousewort after all, as new habitats are being found for that flower. Some allege the proposed listing of 1,000 new endangered plants is a problem. But, in fact, most of the plants proposed for listing occur in Hawaii and California at high altitudes.

In Hawaii the greatest threat to plant species is not development, but the introduction of nonnative plant species and the presence of feral goats, pigs, cows and other grazing animals. There is simply no reason to believe that the regulations and procedures that have resolved conflicts up to now will not continue to do so.

It is even more shameful that so blatantly questionable a project as the Tellico Dam has prompted this more to weaken the Endangered Species Act. Not only has the GAO recently thrown the cost-benefit ratio of the dam into serious question, but in addition, the TVA's Chairman has informed the Senate that we may expect a reevaluation of the project by August 10. Thus we have the spectacle of the Senate of the United States wasting one of its precious remaining legislative days rushing to amend a law that works perfectly well to save a project that may be declared useless by its own sponsoring agency in 3 weeks' time.

Mr. President, my distinguished colleague from Wisconsin is performing an especially heroic act. I know he shares my belief that the Endangered Species Act should remain intact. Yet he has been willing to assume the unpleasant task of working out and defending on the Senate floor the best possible compromise. This kind of leadership is especially valuable and rare and I am pleased to have cosponsored the Senator's amendments and to support these efforts.

However, I am deeply troubled by the new system being proposed. And I believe all of us who are concerned about the preservation of the widest possible variety of species will have to keep a very close watch on the operations of this new committee.

The criteria it will use do not involve any scientific cost/benefit evaluation of a threatened species' actual or potential value. The considerations reviewed are purely political ones. I think this is a dangerous approach. And, worse, the membership of the committee has only the appearance of diversity. In point of fact—it represents one vote—that of the President of the United States, the chief executive officer of every agency on the committee. While he or she may in the future be indifferent to the fate of some projects, big dramatic projects are very likely to become Presidential campaign issues and be decided at the top. Most administrations are likely to have sufficient cohesion that the Presidential opinion will be definitive.

Mr. President, there is no denying that these changes represent a significant politicization of the Endangered Species Act and that these alterations are an unfortunate occurrence. Conservationists should doubtless prepare to exercise even greater vigilance and to engage in more litigation than has previously been necessary. While we can be glad we have fought back many of the regressive attacks on this law, today's victories can provide us no real joy.

Clearly, we must all redouble the effort to keep the American people aware of the importance of protecting the natural diversity of our ecosystem.

Mr. Robert C. Byrd. Mr. President, I ask for third reading.

The Presiding Officer. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. Culver. Mr. President, we have two requests. I ask unanimous consent that following those two requests for time we move immediately under the unanimous-consent agreement to final passage of the bill.

Mr. Robert C. Byrd. Mr. President, time will have to be yielded back before we go to final passage. I wish to have 3 minutes yielded to me also.

Mr. Culver. All right.

I am delighted to yield to the distinguished chairman, Senator Stennis.

Mr. Stennis. Mr. President, I shall take less than 1 minute.

I wish to highly commend the two floor managers of this bill, for the work they have done, and others on their committee that helped them.

I have been concerned, Mr. President, about what is happening under the present law and think that it is too severe.

I had an amendment yesterday that was not agreeable to the majority, and that is all right. If there had been a vote on striking out, though, this committee amendment, I would have voted against the proposal to strike it out because I think the committee amendment, so-called in debate here, is a distinct improvement over the present law, and I am going to support the bill for that reason on final passage. I do express the hope, though, that the debate, interests, manifestations that helped with the added activity now under the Supreme Court decision will emphasize more thoroughly the importance of this matter and what it means and that both objectives can be taken care of better and, therefore, this committee amendment will be allowed practical running room or operation room to carry out the purpose.

I thank the Senator for yielding.

Mr. Culver. Mr. President, I yield 1 minute to the distinguished Senator from Virginia.

Mr. Harry F. Byrd, Jr. The Senator better make it 2 minutes.

Mr. CULVER. I yield 2 minutes to the Senator from Virginia.

Mr. HARRY F. BYRD, Jr. Mr. President, the current law, namely, the Endangered Species Act of 1973, it seems to me, at least insofar as it has been administered, has been too stringent and too severe.

I support and commend the two managers of the bill for the legislation which has been brought to the Senate. These amendments to the 1973 Act will make the current law more practical, more reasonable, and for that reason I shall vote in favor of the legislation before the Senate today.

Had an effort been made, as I understood at one time that it would be, to strike the amendments which were presented to the Senate by the Senator from Iowa (Mr. Culver), I would have voted against that because something needs to be done to make the present law more reasonable. I think the amendments before the Senate do that.

I commend my colleague from Virginia, Mr. Scott, for an amendment which he presented to the Senate today and which was approved by the Senate. Senator Scott's proposal reduces from seven to five the number of members on the committee which would constitute a quorum. It is a seven-person committee. When a seven-member committee is appointed and the law requires for a quorum in order to transact business that all seven of those be present, it seems to me that is not a very reasonable proposal. The Senator from Virginia, my colleague (Mr. Scott) presented an amendment to the Senate to reduce that number from seven to five so that five members being present would constitute a quorum and business could be conducted.

So I congratulate and commend my colleague. He improved the pending legislation.

Mr. SCOTT. I appreciate the kind words of my colleague.

The PRESIDING OFFICER. The time of the Senator from Virginia has expired.

Mr. CULVER. Mr. President, I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator.

The Endangered Species Act of 1973 was a first step toward establishing a comprehensive policy to protect flora and fauna faced with extinction. The law directs the Secretary of the Interior to maintain a list of imperiled species of plants and animals. Those which appear on the list are subject to the protections embodied in the act, including a prohibition against Federal action which would do them harm.

For the past 5 years the Endangered Species Act has indeed provided the means to preserve our threatened wildlife. The central purpose of the act remains valid. It is necessary and desirable at this time, however, to perfect the law so that it will better meet current needs. Difficulties have arisen which were unforeseeable at the time of passage.

Specifically, section 7 of the act flatly prohibits any activity involving a Federal agency or Federal funds which would do harm to an endangered plant or animal species. This affects such ventures as Federal participation in highway or dam construction. The result has been that several national priorities are on a collision course. The need to protect our environment must be balanced against our requirements for energy, transportation, and economic development.

The bill before us, S. 2899, amends the existing law by creating a special panel responsible for resolving conflicts between the sanctions in the Endangered Species Act and the development of necessary Federal projects. The Endangered Species Interagency Committee, to be chaired by the Secretary of the Interior, would be composed of six Cabinet level officials and the Governor of the State in which the conflict occurs. The committee would be authorized to grant exemptions from section 7 of the act.

A stringent set of criteria must be met in order for a Federal project to receive a section 7 exemption. The committee would be required to make detailed findings that proper consultation between the Federal project agency and the Fish and Wildlife Service has occurred and that other reasonable and responsible efforts to resolve the conflict have been made by the project agency.

Furthermore, the committee would have to determine that no prudent alternative to an exemption exists. In this way, the Endangered Species Committee would provide solutions to deadlocked conflicts without abandoning the chief principles of the existing law. No exemption would be granted without the affirmative vote of at least five of the seven committee members.

In addition to this important substantive change, S, 2899 provides the authorization to the Fish and Wildlife Service through fiscal year 1981 for the purpose of administering the endangered species program. The bill also authorizes funds for the operation of the Endangered Species Committee through fiscal year 1981.

I commend the distinguished Senator from Iowa (Mr. Culver), chairman of the Resource Protection Subcommittee of the Environment and Public Works Committee, who has again demonstrated his industry and ingenuity in the formation and management of the Endangered Species Act amendments. His knowledge in this area has proved invaluable to the Senate.

The chairman of the Environment and Public Works Committee, my distinguished colleague from West Virginia, Jennings Randolph, has helped steer S. 2899 through the legislative process. Time and again he has shown his skill and expertise in this area.

Senator Wallop, the ranking minority member of the Resource Protection Subcommittee, provided able management on this measure, and I commend him.

Senator Baker, the distinguished minority leader, has contributed a great deal to S. 2899, as he does every day to the operation of the Senate.

The ranking minority member on the Committee on Environment and Public Works, Senator Stafford of Vermont, has also been an active and able and effective participant in this matter.

I, therefore, compliment all of these Senators and all the members of the committee. I thank all Senators who have participated in the debate, those who have offered amendments, and I feel that they have contributed a service not only to the country but to the Senate which is the institution which we all serve.

I support this measure and am sure the Senate will act favorably upon it.

Mr. CULVER. Mr. President, I wish to thank the majority leader for his very kind comments.

Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 2899.

The Presiding Officer. Without objection, it is so ordered.

Mr. Culver. Mr. President, I call for a final vote.

I believe the yeas and nays are in order on this legislation. I ask for the yeas and nays on final passage.

The Presiding Officer. Is there sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. Culver. Mr. President, I yield back the remainder of my time.

Mr. Wallop. I yield back the remainder of my time.

The Presiding Officer. All time having been yielded back, the question, is, shall the bill pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Cranston. I announce that the Senator from Minnesota (Mr. Anderson) and the Senator from Montana (Mr. Paul Hatfield) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson) would vote "yea."

Mr. Stevens. I announce that the Senator from Maryland (Mr. Mathias) is absent on official business.

The result was announced—yeas 94, nays 3, as follows:

[Rollcall Vote No. 225 Leg.]

YEAS—94

Abourezk
Allen
Baker
Bartlett
Bayh
Bellmon
Bentsen
Biden
Brooke
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Case
Chafee
Chiles
Church
Clark
Cranston
Culver
Curtis
Danforth
DeConcini
Dole
Domenici
Durkin
Eagleton
Eastland
Ford
Garn
Glenn
Goldwater
Gravel
Griffin
Hansen
Hart
Haskell
Hatch
Hatfield, Mark O.
Hathaway
Hayakawa
Heinz
Helms
Hodges
Hollings
Huddleston
Humphrey
Inouye
Jackson
Javits
Johnston
Kennedy
Laxalt
Leahy
Long
Lugar
Magnuson
Matsunaga
McClure
McGovern
McIntyre
Melcher
Metzenbaum
Morgan
Moynihan
Muskie
Nunn
Packwood
Pearson
Pell
Percy
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Sparkman
Stafford
Stennis
Stevens
Stevenson
Stone
Talmadge
Thurmond
Tower
Wallop
Weicker
Williams
Young
Zorinsky

NAYS—3

Nelson	**Proxmire**	**Scott**

NOT VOTING—3

Anderson	**Hatfield, Paul G.**	**Mathias**

So the bill (S. 2899) was passed.

95TH CONGRESS
2D SESSION

S. 2899

IN THE SENATE OF THE UNITED STATES

JULY 19 (legislative day, MAY 17), 1978
Ordered to be printed as passed

AN ACT

To amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such actions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Endangered Species Act Amendments of 1978".

SEC. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(1) by inserting after paragraph (4) thereof the following new paragraph:

"(5) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

"(6) The term 'critical habitat' for a threatened or endangered species means:

"(A) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) which require special management considerations or protection;

"(B) critical habitat for a threatened or endangered species may include specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, into which the species can be expected to expand naturally, upon a determination by the Secretary at the time it is listed, that such areas are essential for the conservation of the species;

"(C) critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraphs (A) and (B) of this paragraph; and

"(D) except in those circumstances determined by the Secretary, critical habitat will not include the entire geographical area which can be occupied by the threatened or endangered species.";

(2) by inserting after paragraph (7) thereof the following new paragraphs:

"(8) The term 'irresolvable conflict' means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, after consultation as required in section 7 (a) of this Act, completion of such action would (A) jeopardize the continued existence of an endangered or threatened species, or (B) result in the adverse modification or destruction of a critical habitat.

"(9) For purposes of subsection 7 (e) (2) (C) the term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction."; and

(3) by renumbering the paragraphs thereof, including any references thereto, as paragraphs (1) through (20), respectively.

SEC. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall insure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary after consultation as appropriate with the affected States, to be critical, unless such agency is granted an exemption for such action by the Committee pursuant to subsection (e) of this section.

"(b) (1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').

"(2) The Committee shall review any application submitted to it pursuant to subsection (d) of this section and determine in accordance with subsection (e) of this section whether or not to grant an exemption from the requirements of subsection (a) of this section for the action set forth in such application.

"(3) The Committee shall be composed of seven members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Chairman of the Council on Environmental Quality.

"(D) The Administrator of the Environmental Protection Agency.

"(E) The Secretary of the Interior.

"(F) The Administrator of the National Oceanic and Atmospheric Administration.

"(G) The Governor of the State which is affected by the action for which an exemption is sought (or in the case of an action affecting more than one State, the Governors of all such States who shall cast collectively a single vote on the Committee as determined among such Governors).

"(4) (A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

"(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5) (A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

"(B) The Committee shall not grant any exemption from the requirements of subsection (a) of this section to the head of any Federal agency for any action authorized, funded, or carried out by such agency unless five members of the Committee vote to grant such exemption.

"(C) The Secretary of the Interior shall be the Chairman of the Committee.

"(D) The Committee shall meet at the call of the Chairman or five of its members.

"(E) All meetings and records of the Committee shall be open to the public.

"(6) The Committee may appoint and fix the pay of such personnel as it deems desirable.

"(7) The staff of the Committee may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Service pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

"(8) The Committee may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

"(9) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

"(10) (A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

"(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

"(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

"(D) The Committee may use the United States mails in the same manner and upon the same conditions as other Federal agencies.

"(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

"(11) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

"(12) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(13) To the extent practicable within the time required for action under subsection (e) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under subsection (e) of this section shall be in accordance with sections 554, 555, and 556 of title 5, United States Code.

"(14) Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption, any application made to it, if the Secretary of State, after a review of the proposed Federal action and its potential implications, and after hearing, certifies, in writing, to the Committee within sixty days of any submission made under subsection (d) (1) of this section, that the granting of any such exemption and the carrying out of such proposed action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

"(15) Except in the case of a member designated pursuant to paragraph (3) (G) of this subsection, no member shall designate any person to serve as his or her representative unless that person is, at the time of such designation, holding a Federal office the appointment to which is subject to the advice and consent of the United States Senate. In no case shall any representative, including a representative of a member designated pursuant to paragraph (3) (G) of this subsection, be eligible to cast a vote on behalf of any member.

"(16) Notwithstanding any other provision of this Act, in any case in which the National Security Council determines that the failure of the Committee to grant an exemption from the requirements of subsection (a) of this section to the head of a Federal agency in connection with any Federal action involving a critical military installation would have an adverse effect on the security of the United States, the National Security Council is authorized to notify the Committee, in writing, and upon the receipt of such notice the Committee shall give immediate consideration to such determination.

"(c) REGULATIONS.—Not later than ninety days after the date of enactment of this section, the Committee shall promulgate regulations which set forth the form and manner in which applications by the heads of the Federal agencies for review of actions by such agencies shall be submitted to the Committee and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any action of such agency include, but not be limited to—

"(1) a description of the consultation process carried out pursuant to subsection (a) of this section between the head of such Federal agency and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service; and

"(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) of this section.

"(d) SUBMISSION OF APPLICATIONS.—(1) The head of any Federal agency may submit an application for review of any action of such agency to the Committee if, in the opinion of the head of such agency, such agency has complied with the requirements of subsection (a) of this section and that an irresolvable conflict exists with respect to such action. Such application for review shall be submitted in accordance with the regulations promulgated by the Committee under subsection (c) of this section.

"(2) The Director of the Fish and Wildlife Service (or where appropriate the Administrator of the National Oceanic and Atmospheric Administration) shall prepare and submit to the Committee within thirty days of any submission made under paragraph (1) of this subsection his comments concerning such submission.

"(e) (1) REVIEW AND DETERMINATION.—After the Committee receives the application and comments submitted pursuant to subsection (d) of this section, the Committee shall review such application and comments and—

"(A) determine, with respect to the action which is the subject of such application, whether or not—

"(i) the requirements of the consultation process described in subsection (a) of this section have been met; and

"(ii) there has been a reasonable and responsible effort to resolve the conflicts which are known to exist, and the Federal agency requesting such exemption has made, subsequent to the initiation of the consultation under subsection (a) of this section, no irreversible or irretrievable commitment of resources which forecloses the consideration of modification or alternatives to such action; and

"(iii) an irresolvable conflict exists; and

"(B) if it makes positive determinations under clauses (i), (ii), and (iii) of subparagraph (A), determine and publish in the Federal Register, within one hundred and eighty days after receipt of the application and response required in subsection (d) of this section and after notice and public hearing on the record, whether or not to grant an exemption from the requirements of subsection (a) of this section to the head of such Federal agency for such action.

"(2) The Committee may only grant an exemption for any action under subsection (e) of this section if it determines on the record that—

"(A) there is no reasonable and prudent alternative to such action; and

"(B) the action is of national or regional significance; and

"(C) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and that such action is in the public interest.

"(f) NATIONAL ENVIRONMENTAL POLICY ACT.—No final determination of the Committee under subsection (e) of this section shall be considered a major Federal action under the terms of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided,* That an environmental impact statement which discusses the impacts upon endangered and threatened species or their critical habitat shall have previously been prepared with respect to any Federal action exempted from the requirements of subsection (e) of this section by such final determination of the Committee.

"(g) MITIGATION.—In those instances where the Committee determines that an exception is warranted under subsection (e) of this section the Committee must assure that the action approved for such exemption incorporates all reasonable mitigation measures deemed necessary by the Secretary to minimize adverse impacts upon the affected endangered or threatened species or its critical habitat including but not limited to live propagation, transplantation, and habitat acquisition and improvement. The Federal agency or department receiving such exemption shall include the costs of such mitigation measures within the overall costs of continuing the proposed action.

"(h) NOTICE.—The sixty-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (e) of this section granting an exemption from the requirements of subsection (a) of this section.

"(i) EXCEPTION ON TAKING.—Notwithstanding sections 4(d) and 9(a) of this Act or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (e) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

"(j) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (e) (2) and (g) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974 or for any authorized Federal project, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to mitigate the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

"(k) AUTHORIZATION.—There is authorized to be appropriated to carry out this section not to exceed $750,000 for fiscal year 1979, not to exceed $750,000 for fiscal year 1980, and not to exceed $750,000 for fiscal year 1981. The Chairman of the Committee shall furnish a report to the

Congress at the end of fiscal year 1979. The report shall speak to the adequacy of the budget authority contained in this subsection.

"(l) The authority granted to the Endangered Species Committee established in this section shall terminate on September 30, 1981.".

SEC. 4. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b)" and by adding the following new paragraph:

"(2) The provisions of this section shall not apply to any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978, or the domestic captive produced progeny of any legally held raptor: *Provided,* That such raptor has not been intentionally returned to a wild state. Persons holding such raptors must be able to demonstrate that the raptors do, in fact, qualify under the provisions of this paragraph. Such persons shall maintain and submit to the Secretary on request such inventories, documentation, and records as are reasonable and as the Secretary may by regulation require: *Provided,* That such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.".

SEC. 5. The third sentence of section 11(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by inserting the word "knowingly" after the word "otherwise".

SEC. 6. Section 11 (a) is amended by adding a new

SEC. 6. Section 11 (a) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding a new subsection at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.".

SEC. 7. Section 11 (b) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding a new subsection at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to persecution if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.".

SEC. 8. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, not to exceed $25,000,000 for the fiscal year ending September 30, 1980, and not to exceed $27,000,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $3,000,000 for the fiscal year ending September 30, 1980, and not to exceed $3,500,000 for the fiscal year ending September 30, 1981, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 9. (a) Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by striking out "subsection" in the matter pre-

ceding subparagraph (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so redesignated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph" in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (i) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

"(2) In furtherance of the purposes of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4 (d) or section 9(a) (1) with respect to the taking of any resident endangered or threatened species.".

(b) Paragraph (16) of section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) (formerly paragraph (13) and redesignated paragraph (16) by section 2 of this Act) is amended by striking out "fish or wildlife" and inserting in lieu thereof "fish, wildlife, or plant".

SEC. 10. Section 4(a) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding a new subsection as follows:

"(3) Critical habitat of an endangered or threatened species shall be designated concurrently with determination of that species' status except in those cases when—

"(A) an emergency exists because no critical habitat information is available or there are other contingencies;

"(B) there are species listed before enactment of the Endangered Species Act of 1973.".

SEC. 11. Section 4(f)(2)(A) of the Endangered Species Act of 1973 (16 U.S. 1533) is amended by adding a new paragraph (ii) as follows, and renumbering as appropriate:

"(ii) the Secretary shall offer for publication in appropriate scientific journals the substance of the Federal Register notice referred to in (i) above; and".

SEC. 12. Section 3(4) of the Endangered Species Act of 1973 (16 U.S.C. 1532(4)) is amended as follows: strike the words, "a significant portion", and insert "the essential portion".

SEC. 13. Section 3 (15) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (15)) is amended as follows: strike the words, "a significant portion", and insert, "the essential portion".

Passed the Senate July 19 (legislative day, May 17), 1978.

Attest: J. S. KIMMITT,
Secretary.

95th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { No. 95-1804

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

October 15 (legislative day, October 14), 1978.—Ordered to be printed

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Mr. Murphy of New York, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 2899]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that act should be granted for such actions, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment, insert the following:

That this Act may be cited as the "Endangered Species Act Amendments of 1978".

Sec. 2. Section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532) is amended—

(1) by inserting before paragraph (i) thereof the following new paragraph:

"(1) The term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction."

(2) by inserting after paragraph (4) as redesignated by paragraph (7) of this section the following new paragraph:

"(5)(A) The term 'critical habitat' for a threatened or endangered species means—

"(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

"(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

"(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.".

(3) by inserting after paragraph (6), as redesignated by paragraph (7) of this section the following new paragraph:

"(7) The term 'Federal agency' means any department, agency, or instrumentality of the United States.";

(4) by inserting after paragraph (10), as redesignated by paragraph (7) of this section, the following new paragraphs:

"(11) The term 'irresolvable conflict' means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, after consultation as required in section 7(a) of this Act, completion of such action would (A) jeopardize the continued existence of an endangered or threatened species, or (B) result in the adverse modification or destruction of a critical habitat.

"(12) The term 'permit or license applicant' means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.";

(5) by striking out paragraph (16), as redesignated by paragraph (7) of this section, and inserting in lieu thereof the following:

"(16) The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.";

(6) by striking out paragraph (18), as redesignated by paragraph (7) of this section, and inserting in lieu thereof the following:

"(18) The term 'State agency' means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State."; and

(7) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively, by redesignating paragraph (4) as paragraph through (4), respectively, by redesignating paragraphs (4) as para-(6), by redesingating paragraphs (5) through (7) as paragraphs (8) through (10), respectively, and by redesignating paragraphs (8) through (16) as paragraphs (13) through (21) respectively. Sec. 3. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended to read as follows:

"INTERAGENCY COOPERATION

"SEC. 7. (a) CONSULTATION.—The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation

with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

"*(b) SECRETARY'S OPINION.—Consultation under subsection (a) with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the speicies or its critical habitat. The Secretary shall suggest those reasonable and prudent alternatives which he believes would avoid jeopardizing the continued existence of any endangered or threatened species or adversely modifying the critical habitat of such species, and which can be taken by the Federal agency or the permit or license applicant in implementing the agency action.*

"*(c) BIOLOGICAL ASSESSMENT.—To facilitate compliance with the requirements of subsection (a), each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).*

"*(d) LIMITATION ON COMMITMENT OF RESOURCES.—After initiation of consultation required under subsection (a), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid jeopardizing the continued existence of any endangered or threatened species or adversely modifying or destroying the critical habitat of any such species.*

"*(e)(1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the 'Committee').*

"(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a) of this section for the action set forth in such application.

"(3) The Committee shall be composed of seven members as follows:

"(A) The Secretary of Agriculture.

"(B) The Secretary of the Army.

"(C) The Chairman of the Council of Economic Advisers.

"(D) The Administrator of the Environmental Protection Agency.

"(E) The Secretary of the Interior.

"(F) The Administrator of the National Oceanic and Atmospheric Administration.

"(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

"(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

"(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

"(B) The Secretary of the Interior shall be the Chairman of the Committee.

"(C) The Committee shall meet at the call of the Chairman or five of its members.

"(D) All meetings and records of the Committee shall be open to the public.

"(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a non-reimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

"(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

"(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

"(C) Subject to the Privacy Act, the Committee may secure directly rom any Federal agency infomation necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

"(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

"(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

"(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

"(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

"(10) Except in the case of a member designated pursuant to paragraph (3)(G) of this subsection, no member shall designate any person to serve as his or her representative unless that person is, at the time of such designation, holding a Federal office the appointment to which is subject to the advice and consent of the United States Senate. In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

"(f) REGULATIONS.—Not later than ninety days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to—

"(1) a description of the consultation process carried out pursuant to subsection (a) of this section between the head of the Federal agency and the Secretary; and

"(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) of this section.

"(g) APPLICATION FOR EXEMPTION AND CONSIDERATION BY REVIEW BOARD.—(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a), the Secretary's opinion under subsection (b) indicates that the agency action may jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify the critical habitat of such species. An application for an exemption shall be considered initially by a review board in the manner provided in this subsection, and shall be considered by the Endangered Species Committee for a final determination under subsection (h) after a report is made by the review board. The applicant for an exemption shall be referred to as the 'exemption applicant' in this section.

"(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the completion of the consultation process. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

"(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the review board to be established under paragraph (3) and to the Endangered Species Committee for consideration of such application.

"(3)(A) A review board shall be established for purposes of considering an application for exemption and submitting a report to the Endangered Species Committee under this subsection as follows:

"(i) One individual shall be appointed to the board by the Secretary not later than 15 days after an application is submitted pursuant to paragraph (2).

"(ii) One individual shall be appointed to the board by the President, not later than 30 days after an application is submitted pursuant to paragraph (2) and after consideration of any recommendations received pursuant to paragraph (2)(B). An individual appointed by the President under this subparagraph shall be a resident of a State, if any, in which the agency action will be, or is being, carried out.

"(iii) One administrative law judge shall be selected to serve on the board by the Civil Service Commission in the same manner as administrative law judges are selected under section 3344 of title 5 of the United States Code to be detailed to an agency which occasionally or temporarily is insufficiently staffed with administrative law judges. The use by the review board of such an administrative law judge shall be on a reimbursable basis.

"(B) Members of a review board who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the board. All other members shall be entitled to receive an amount not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day during which they are engaged in the actual performance of duties vested in the the board. While away from their homes or regular places of business in the performance of services for a review board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(4) The Secretary shall submit the application to the review board immediately after its appointment under paragraph (3), and the Secretary shall submit to the review board, in writing, his views and recommendations with respect to the application within 60 days after receiving a copy of any application under paragraph (2).

"(5) It shall be the duty of a review board appointed under paragraph (3) to make a full review of the consultation carried out under subsection (a), and within 60 days after its appointment or within such longer time as is mutually agreed upon between the exemption applicant and the Secretary, to make a determination, by a majority vote, (1) whether an irresolvable conflict exists and (2) whether such exemption applicant has—

"(A) carried out its consultation responsibilities as described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which will avoid

jeopardizing the continued existence of an endangered or threatened species or result in the adverse modification or destruction of a critical habitat;

"(B) conducted any biological assessment required of it by subsection (c); and

"(C) refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

Any determination by the review board that an irresolvable conflict does not exist or that the exemption applicant has not met the requirements of subparagraph (A), (B), or (C) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(6) If the review board determines that an irresolvable conflict exists and makes positive determinations under subparagraphs (A), (B), and (C) of paragraph (5), it shall proceed to prepare the report to be submitted under paragraph (7).

"(7) Within 180 days after making the determinations under paragraph (6), the review board shall submit to the Committee a report discussing—

"(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

"(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

"(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee.

"(8) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with section 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

"(9) In carrying out its duties under this subsection, a review board may, and any member of a review board if so authorized by the review board, may—

"(A) sit and act at such times and places, take such testimony, and receive such evidence, as the review board deems advisable;

"(B) subject to the Privacy Act of 1974, request of any Federal agency or applicant information necessary to enable it to carry out such duties, and upon such request the head of such Federal agency shall furnish such information to the review board; and

"(C) use the United States mails in the same manner and upon the same conditions as a Federal agency.

"(10) Upon request of a review board, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the review board to assist it in carrying out its duties under this section.

"(11) The Administrator of the General Services, shall provide to a review board, on a reimbursable basis, such administrative support services as the review board may request.

"(12) All meetings and records of review boards shall be open to the public.

"(h) Exemption.—(1) The Committee shall make a final determination whether or not to grant an exemption within 90 days of receiving the report of the review board under subsection (g)(7). The Committee shall grant an exemption from the requirements of subsection (a) for an agency action if, by a vote of not less than five of its members voting in person—

"(A) it determines on the record, based on the report of the review board and on such other testimony or evidence as it may receive, that—

"(i) there are no reasonable and prudent alternatives to the agency action:

"(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

"(iii) the action is of regional or national significance; and

"(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any financial determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

"(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under subsection (h) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action, provided that a biological assessment has been conducted under paragraph (3).

"(B) An exemption shall not be permanent under subparagraph (A) if the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of the species. If the Secretary so finds, the Committee shall determine within 30 days after such finding whether to grant an exemption for the agency action notwithstanding the Secretary's finding.

"(i) Review by Secretary of State.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

"(k) Special Provisions.—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): Provided, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

"(l) Committee Orders.—(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

"(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

"(m) Notice.—The sixty-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a) of this section.

"(n) Judicial Review.—Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the Court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

"(o) Exception on Taking.—Notwithstanding sections 4(d) and 9(a) of this Act or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (h) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

"(p) Exemptions In Presidentially Declared Disaster Areas.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401

or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

"(q) AUTHORIZATION.—There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g) and (h) of this section not to exceed $600,000 for fiscal year 1979, and not to exceed $300,000 for the period beginning October 1, 1979 and ending March 31, 1980. The Chairman of the Committee shall report to the Congress before the end of fiscal year 1979 with respect to the adequacy of the budget authority contained in this subsection.

SEC. 4. Section 9(b) of the Endangered Species Act (16 U.S.C. 1538) is amended by inserting "(1)" after "(b) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—" and by adding, the following new paragraph:

"(2)(A) This section shall not apply to—

"(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

"(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

"(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary."

SEC. 5. Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end thereof the following new subsection 5:

"(h) CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article (other than scrimshaw) which—

"(A) was made before 1830;

"(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

"(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

"(D) is entered at a port designated under paragraph (3).

"(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirement set forth in paragraph (1)(A), (B), and (C).

"(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

"(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

"(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

"(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

"(C) is in the custody of the United States on such date of enactment;

may, before the close of the one year period beginning on such date of enactment, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date or return, be deemed to be a lawful importation under this Act.

"(i)(1) TELLICO AND GRAYROCKS PROJECTS.—Notwithstanding any other provision of this Act, the Committee shall, within 30 days of the date of the enactment of the Endangered Species Act Amendments of 1978, proceed to consider the exemption of the Tellico Dam and Reservoir Project and the Grayrocks Dam and Reservoir Project from the requirements of section 7(a). For the purposes of such consideration, the Committee shall grant an exemption to such projects if the criteria of section 7(h)(1)(A)(i) and 7(h)(1)(A)(ii) are met. A decision on any such exemption shall be made within 90 days after the date of the enactment of the Endangered Species Act Amendments of 1978. If no decision is made within such 90-day period, such project shall be deemed to be exempted from the requirements of section 7(a).

"(2) Following the rendering of a biological opinion by the United States Fish and Wildlife Service concerning the effect, if any, of the operation of the Missouri Basin Power Project on endangered species or their critical habitat, the responsible officers of the Rural Electrification Administration, the Secretary of the Interior, and the Secretary of the Army, shall require such modifications in the operation or design of the Project as they may determine are required to insure that actions authorized, funded, or carried out by them, relating to the Missouri Basin Power Project do not jeopardize the continued existence of such endangered species or result in the destruction or adverse modification of habitat of such species which is or has been determined to be critical by the Secretary of the Interior, after consultation as appropriate with the affected States."

SEC. 6. Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended—

(1) in the first and second sentences of subsection (a)(1) by striking out "or who knowingly commits an act in the course of a commercial activity which violates" each place it appears and inserting in lieu thereof "and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates";

(2) in the third sentence of subsection (a)(1) by striking out "$1,000" and inserting in lieu thereof "$500";

(3) in subsection (b)(1) by striking out "willfully commits an act which" each place it appears and inserting in lieu thereof "knowingly";

(4) in subsection (b)(2) by inserting "a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing" after "authorizing";

Sec. 7. Section 11(a) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding a new paragraph at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.".

Sec. 8. Section 11(b) of the Endangered Species Act of 1973 (16 U.S.C. 1540) is amended by adding a new paragraph at the end thereof as follows:

"(3) Notwithstanding any other provision of this Act, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.".

Sec. 9. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, and not to exceed $12,500,000 for the period beginning October 1, 1979, and ending March 31, 1980.

"(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980, to enact the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act."

Sec. 10. Section 6(c) of the Endangered Species Act of 1973 (16 U.S.C.

(1) by inserting "(1)" after "(c) Cooperative Agreements.—";

(2) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(4) by stiking out "subsection" in the matter preceding subparagraph (A) (as so redesignated) and inserting in lieu thereof "paragraph";

(5) by striking out "endangered species or threatened species" in subparagraph (D) (as so designated) and inserting in lieu thereof "endangered or threatened species of fish or wildlife";

(6) by striking out "paragraphs (3), (4), and (5) of this subsection" in clause (i) (as so redesignated) and inserting in lieu thereof "subparagraphs (C), (D), and (E) of this paragraph";

(7) by striking out "subparagraph (A) and this subparagraph' in clause (ii) (as so redesignated) and inserting in lieu thereof "clause (i) and this clause"; and

(8) by adding at the end thereof the following new paragraph:

"(2) In furtherance of the purpose of this Act, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this Act. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this Act, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

"(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

"(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

"(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

"(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

"(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

"(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1) with respect to the taking of any resident endangered or threatened species.".

Sec. 11. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by adding at the end of subsection (a)(1) the following new sentence: "At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to enactment of the Endangered Species Act Amendments of 1978.";

(2) by amending subsection (c)(1) by striking out "and shall", and by inserting immediately before the final period the following: ", and specify any critical habitat within such range";

(3) in subsection (c) by inserting at the end thereof the following new paragraph:

"(4) The Secretary shall—

"(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review: and

"(B) determine on the basis of such review whether any such species should—

"(i) be removed from such list;

"(ii) be changed in status from an endangered species to a threatened species; or

"(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b).".

(4) by amending subsection (f)—

(A) in paragraph (2)(A) by striking out "In" and inserting in lieu thereof "Except as provided in subparagraph (B), in";

(B) by inserting after subparagraph (A) of paragraph (2) the following new subparagraph:

"(B) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

"(i) shall publish general notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation—

"(I) in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat;

"(ii) shall offer for publication in appropriate scientific journals the substance of the Federal Register notice referred to in clause (i)(I);

"(iii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat, if any; and

"(iv) shall—

"(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation within or adjacent to the area in which the endangered or threatened species is located, if request therefor is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

"(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State and, if requested, hold a public hearing in each such State.

If a public meeting or hearing is held on any regulation, the regulation may not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. Any accidental failure to provide actual notice under clause (ii) to all general local governments required to be given notice shall not invalidate the proposed regulation.";

(C) by redesignating subparagraph (B) of paragraph (2) as subparagraph (C), and by inserting "or (B)" after "Neither subparagraph (A)" in such subparagraph; and

(D) by adding at the end thereof the following new paragraphs:

"(4) Any proposed or final regulation which specifies any critical habitat of any endangered species or threatened species shall be based on the best scientific data available, and the publication in the Federal Register of any such regulation shall, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be impacted by such designation.

"(5) A final regulation adding a species to any list published pursuant to subsection (c) shall be published in the Federal Register not later than two years after the date of publication of notice of the regulation proposing such listing under paragraph (B)(i)(I). If a final regulation is not adopted within such two-year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the Federal Register not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before the date of the enactment of the Endangered Species Act Amendments of 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on such date of enactment."; and

(5) by adding at the end thereof the following new subsection:

‘(f) RECOVERY PLANS.—The Secretary shall develop and implement plans (hereinafter in this subsection referred to as ‘recovery plans') for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.";

(6) in subsection (c)(2)—

A) by striking out "upon" and inserting in lieu thereof "within 90 days of the receipt of";

B) by inserting "and publish in the Federal Register" after "conduct";

C) by inserting "the status of" after "a review of"; and

D) by inserting at the end thereof the following: "Such review and finding shall be made and published prior to the initiation of any procedures under subsection (b)(1).".

(7) by adding at the end of subsection (b) the following new paragraph:

"(4) In determining the critical habitat of any endangered or threatened species, the Secretary shall consider the economic impact, and any other relevant impacts, of specifying any particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species."

SEC. 12. That portion of subsection (a) of section 5 of the Endangered Species Act of 1973 (16 U.S.C. 1534) which precedes paragraph (1) is amended to read as follows:

"(a) PROGRAM.—The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 4 of this Act. To carry out such a program, the appropriate Secretary—".

SEC. 13. Paragraph (3) of section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended to read as follows:

"(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations."

Sec. 14. Notwithstanding any provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any regulation promulgated or policy established thereunder, the Secretary of the Interior is authorized and directed to release to Doctor Eugene L. Vickery of Lena, Illinois, a narwhale (Monodon monocerus) tusk cane contained in a shipment consigned to him that was seized by agents of the United States Fish and Wildlife Service at O'Hare International Airport, Chicago, Illinois, on November 30, 1977. For purposes of section 9 and section 11 of such Act, Doctor Vickery shall be considered not to have violated any provision of such Act with respect to the importation of such narwhale tusk cane.

And the House agree to the same.

JOHN M. MURPHY,
BOB LEGGETT,
JOHN D. DINGELL,
BO GINN,
DAVID R. BOWEN,
PHILIP E. RUPPE,
EDWIN B. FORSYTHE,
Managers on the Part of the House.

JOHN CULVER,
EDMUND S. MUSKIE,
MALCOLM WALLOP,
JOHN H. CHAFEE,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that act should be granted for such actions, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

SECTION 1. SHORT TITLE

The short title of the conference report is the "Endangered Species Act Amendments of 1978", which is the short title of both the Senate act and the House amendment.

SECTION 2. DEFINITIONS

The following terms are defined in the conference report:

"Federal agency" is any department, agency, or instrumentality of the United States, the definition contained in both versions of the bill.

"Alternative courses of action" as used in section 3(1) includes all alternatives to an agency action and is not limited to the original objectives of the action or agency jurisdiction.

The conferees adopted a provision contained in both versions which defines "critical habitat" as specific areas *within* the geographical area occupied by the species at the time it is listed that is essential to the species conservation and requires special management consideration.

In addition, the Secretary may designate critical habitat outside the geographical area occupied by the species at the time it is listed if he determines that such areas are essential for the conservation of the species.

The conferees adopted the Senate definition of "irresolvable conflict" which is a set of circumstances under which, after consultation has been concluded, completion of an agency's action would jeopardize the continued existence of a threatened or endangered species or result in the adverse modification or destruction of critical habitat. There is no similar House provision.

S. 2899 redefines the term "species" as it is used in the act. The existing definition of "species" in the act includes subspecies of animals and plants, taxonomic categories below subspecies in the case of animals, as well as distinct populations of vertebrate "species.". The definition included within the conference report would exclude taxonomic categories below subspecies from the definition as well as distinct populations of invertebrates.

The term "State agency" as defined in the House amendment adds to the current definition in the act the State entity responsible for the conservation of plant resources. There is no similar Senate provision.

The conferees did not accept the House definition of "species or habitat degradation" which was defined as placing in jeopardy the continued existence of, or destruction or modification of critical habitat of, an endangered or threatened species. The conferees were concerned that this provision, although merely intended to improve drafting current provision of law, might be interpreted as permitting a lesser standard of protection for threatened and endangered species. There is no similar Senate provision.

The term "permit or license applicant" was accepted from the House bill. When used with respect to an action of a Federal agency for which an exemption is sought under section 7, the term is defined as any person whole application to a Federal agency for a permit or license has been denied primarily because of the application of section 7(a) to an agency action for which an exemption is sought.

SECTION 3. INTERAGENCY COOPERATION

Section 3 combines provisions of both the Senate bill and the House amendment which establishes procedures for Federal agency compliance with section 7 of the act, as well as procedures whereby Federal agencies, the Governor of a State, or an individual seeking a permit or license may seek an exemption from the requirements of section 7.

CONSULTATION

The basic premise of S. 2899 is that the integrity of the interagency consultation process designated under section 7 of the act be preserved.

Many, if not most, conflicts between the Endangered Species Act and Federal actions can be resolved by full and good faith consultation between the project agency and the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. The committee intends that only in those instances where the consultation process has been exhausted and a conflict still exists should the Endangered Species Committee consider granting an exemption for a Federal action.

The conferees adopted Senate language creating a new section 7(a), which essentially restates section 7 of existing law, and outlines the responsibilities of the Secretary and other Federal agencies for protecting endangered species. Conferees did restore a phrase which had been omitted from the Senate language, to clarify that Federal agencies shall consult with the Secretary to ensure that their actions do not adversely impact threatened and endangered species or their critical habitat. The Conferees felt that the Senate provision by retaining existing law, was preferable since regulations governing section 7 are now familiar to most Federal agencies and have received substantial judicial interpretation.

The conferees did accept from the House amendments, however, four provisions designed to expedite and improve the consultation process. First, consultation would have to be completed within 90 days or such other time as it is mutually agreeable to the Secretary and the Federal agency. Second, after the conclusion of consultation the Secretary is required to provide to the Federal agency a written statement detailing whether the agency's actions are in violation of section 7 and outline any reasonable and prudent alternatives to the action.

Third, a biological assessment shall be conducted for the purpose of identifying the presence of any proposed or listed species which might be affected by projects where no contracts for actual construction have been entered into and no construction has begun before the date of enactment of this bill and where the Secretary has advised that such species may be present.

Fourth, after the initiation of consultation, the Federal agency is prohibited from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation of implementation of reasonable and prudent alternatives to the proposed action.

EXEMPTION PROCEDURE

The conferees adopted from the House an amended version of the provisions creating a review board to screen applications for exemptions from section 7. Under the new section 7, a Federal agency, the Governor of a State where the agency action, species, and critical habitat are located, or an individual seeking a permit or license, may submit to the Secretary an application for an exemption. Such application may be submitted only if the Secretary has issued an opinion stating that the proposed action would not conform with the requirements of section 7(a). The application must be filed within 90 days after completion of consultation and must set forth a statement detailing why the agency action is qualified for an exemption. Upon receipt of the application, the Secretary must promptly notify the Governor or Governors of any State(s) in which the action is being carried out and submit the application to the review board.

The review board will consist of three members: one appointed by the Secretary, one appointed by the President after consideration of the recommendations from the Governor(s), of the affected State(s), and an administrative law judge. Within 60 days of receiving the application, the Secretary is to submit to the review board his written views on the matter and his recommendations as to the final disposition of the matter.

Within 60 days after its appointment, or a longer period if agreed to by the Secretary and the agency, the board must determine, by majority vote, whether the agency has (1) consulted with the Secretary in good faith and made a reasonable and responsible effort to consider modifications or alternatives to the proposed action which are consistent with conserving the endangered species (2) has conducted a biological assessment as required in section 7 and (3) has made no irreversible or irretrievable commitment of resources as prohibited under section 7.

If the board makes positive determinations on these three matters, it would proceed to conduct a formal adjudicatory hearing to review the question of the exemption. Within 180 days after making the above determination the board would submit to the committee a report discussing (a) the existence of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits intended to focus attention on the agency action, its objectives, and the aspects of the agency action which gave rise to the problem initially. The focus of a section 7 consultation should be on solving the problem in a way which is clearly withint he jurisdiction and expertise of the consulting parties.

In contrast, the review board and the Endangered Species Committee should focus on a wider variety of alternatives. Their search should not be limited to original project objectives or the acting agency's jurisdiction. The committee does intend that the review board should only consider alternatives which are both technically capable of being constructed and prudent to implement.

The second criteria considered by the committee involves an evaluation of the benefits of the agency action and an evaluation of the benefits associated with alternatives which would avoid an adverse impact on the species or its habitat.

In the context of this provision, the committee intends that the term "benefits" shall include, but not be limited to, ecological and economic considerations. Among the economic criteria which may be examined and considered by the Endangered Species Committee are those set forth in OMB Circular A-107 and in Executive Order 11949. These include:

(1) the cost impact on consumers, business markets, Federal, State, and local governments;

(2) the effect on productivity of wage earners, businesses and government;

(3) the effect on competition;

(4) the effect on supplies of important materials, products, and services;

(5) the effect on employment; and

(6) the effect on energy supply and demand.

The committee does not intend, however, that the Endangered Species Committee evaluation should be limited to these criteria. They should also consider the national interest, including actions authorized, funded or carried out by the Secretary of Defense; the esthetic, ecological, educational, historical, recreational and scientific value of any endangered or threatened species; and any other factors deemed relevant.

The committee notes that the amendment requires the committee to balance the benefits associated with the agency action against the benefits associated with alternative courses of action. They should not balance the benefits of the action against the value associated with the listed species.

To be "in the public interest," an agency action must affect some interest, right or duty of the community at large in a way which they would perceive as positive.

The third finding required before the committee may recommend that an exemption be granted is that the agency action be of "national or regional significance." The term "regional significance" is not intended to refer merely to projects which affect more than one State. Rather, the committee believes that the Endangered Species Committee should evaluate the nature, as well as the scope of the project, in their determination of whether an action is nationally or regionally significant. As an example, the committee believes that an action affecting the Port of Sacramento, in California, would be regionally significant.

of the action and of alternative courses of action and (b) a summary of the evidence concerning whether or not the agency action is in the public interest and is of regional or national significance. This provision differs from the House bill in that the board would merely be summarizing testimony and evidence received during the hearings, rather than making recommendations to the committee on compliance with specific criteria. The board would be expected to describe the various options available to the committee.

The record of the review board's proceedings is to be transmitted to the Endangered Species Committee along with the board's report. The review board has the power to request on a nonreimbursable basis the assistance of agency personnel from the head of any Federal agency. The review board should make maximum use of this procedure and should minimize reliance on personnel provided on a reimbursable basis by the GSA. The committee intends the members of the review board to be physically present during the hearing. The committee believes that the presence of the review board during the formal hearing will assist in the development of a sound and comprehensive report to the Endangered Species Committee.

The committee does not intend that either the review board or the Endangered Species Committee should be considered as Federal agencies except as provided for in the bill. The Federal Advisory Committee Act shall not be applicable to either the review boards or the Endangered Species Committee.

Section 7(e) establishes the Endangered Species Committee. The committee is to be composed of seven members: The Secretary of Agriculture; the Secretary of the Army; the Secretary of the Interior; the Administrator of the National Oceanic and Atmospheric Administration; the Chairman of the Council of Economic Advisers; the Chairman of the Council on Environmental Quality; and a person appointed by the President upon recommendation of the Governor or Governors of the State or States within which the agency action in question will occur.

The committee is to meet at the call of its Chairman, the Secretary of the Interior. It has 90 days from the date it receives the review board's report to decide whether or not to grant the agency action an exemption from new subsection 7(c)(1).

An exemption may only be granted by five of the committee's members, voting in person, and after a determination is made on the record. The committee may base its determination on the record developed by the review board, but has the power to itself receive testimony and evidence. The committee does not expect the Endangered Species Committee to conduct a second final adjudicatory hearing. The criteria the committee is to use in making its determination are:

> (1) There are no "reasonable and prudent alternatives to the agency action; (2) the benefits of the agency action clearly outweigh the benefits of alternative course of action consistent with conserving the species or its critical habitat, and that such action is in the public interest; and (3) the action is of national or regional significance."

The committee believes that the search for alternatives before the review board and the committee should be significantly larger than during the consultation stage. Section 7 consultation is

If the committee grants an exemption, it must require reasonable mitigation and enhancement measures be taken by the successful applicant. The phrase "reasonable mitigation and enhancement measures" is used in several places in the legislation to describe actions which shall be taken by an applicant which receives an exemption. The required actions must be "reasonable" in their cost, likelihood of protecting the listed species, and the availability of the technology required to make them effective, and other considerations deemed relevant by the Endangered Species Committee. The explanation of the phrase in new section 7 makes it clear that "reasonable mitigation and enhancement measures" are those actions by the applicant which are necessary and appropriate "to minimize the adverse effects of the agency action" on the species or habitat in question. Live propagation, transplantation, and habitat acquisition and improvement are mentioned as specific examples of actions a successful applicant might be required to take.

The committee's final determination is subject to judicial review in the circuit court of appeals for any district where the agency action will be located. This refers to the location of the project where the project will be carried out, and not the district where a permit or license might be issued.

The committee may not grant an exemption if the Secretary of State gives it written certification that the granting of the exemption and the resultant agency action would violate an international treaty or other international obligation of the United States. The certification must be made within 60 days after the committee receives the application for exemption and must be published in the Federal Register. The phrase "other international obligation" should be understood to mean a formal, legal obligation of the U.S. Government. This provision would apply to the Agreement on the Conservation of Polar Bears, signed November 15, 1973; the U.S.-Japan Migratory Bird Convention; as well as the recently ratified U.S.-Russian Migratory Bird Treaty.

When the committee formally issues its order exempting an agency action, any reasonable mitigation and enhancement measures must be spelled out in the document. New section 7(h) makes it clear that such measures are to be carried out and paid for by the party receiving the exemption. In the case of a Federal agency action, the mitigation and enhancement measures required must be authorized by the Congress prior to implementing the action. Such measures would also have to be funded by the Congress concurrently with all other project features. The reasonable mitigation and enhancement measures required must actually be funded and carried out for the exemption to be effective.

The costs of the mitigation and enhancement measures are to be considered project costs for all purposes except for the computation of benefit-cost or other ratios.

Agencies receiving an exemption are required to submit annual reports to the Council on Environmental Quality describing compliance with ordered mitigation and enhancement measures.

The bill adds a new section which would allow the President to grant an exemption for replacement and repairs on public facilities necessary to prevent recurrence of a natural disaster which resulted in a Presidential declaration of a Federal disaster area.

H.R. 14104 adds a new provision which indicates that the granting of an exemption is not a major Federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if an environmental impact statement which discusses impacts on endangered or threatened species or their critical habitats has been prepared on the agency action.

SECTION 4. RAPTORS

During the past 15 years, biologists, conservationists, and falconers have been working to produce raptors through propagation in captivity. In this work an emphasis has been placed on raptors which are now listed as endangered under the authority of the Endangered Species Act. However, prohibitions contained in section 9 of the law against commerce in endangered species have impeded these breeding activities.

S. 2899 amends section 9 of the act to clarify the situation regarding domestic, captive-produced raptors. For the purpose of this amendment, raptor means any bird of prey.

Unless specified in other laws, raptors held prior to the enactment of the act on December 28, 1973 are exempted from the provisions and prohibitions of the act. It is the intent of the committee that the domestic captive-produced progeny of any raptor which was legally held prior to enactment will also be exempt from the provisions and prohibitions of the act, even if such progeny were produced after December 28, 1973.

In order to encourage breeding of raptors in captivity, the domestic captive-produced progeny of raptors considered to be endangered, but legally taken from the wild after December 28, 1973, shall be considered for legal purposes in a like manner as the progeny of raptors captured before 1973. The committee believes this will alleviate some of the human pressures on wild raptor populations, will increase genetic diversity in captive populations, and will further encourage captive production of raptors for conservation, recreation, scientific and breeding purposes.

Further, it is the intent of the committee that where domestic captive bred raptors have been intentionally released and returned to a wild state for conservation and reintroduction purposes, these raptors will be considered to be fully protected under the act. In the case of raptors, the Congress recognizes the worldwide distribution of various species, such as the Peregrine Falcon. These raptors have subtle regional differences, but constitute a single species. This amendment is intended to apply to the raptor species as inclusive of all of its subspecies or regional differences. In order to augment wild populations, the Secretary should encourage the reintroduction of captive bred raptors into the wild. To that end, it is anticipated that the Secretary, on a discretionary basis, may grant permits to qualified individuals and organizational raptor breeders to obtain additional brood stock from the wild populations, provided that offspring of such birds are reintroduced back into the wild in a manner designed to effect a net increase in the overall wild population. The procedures for granting permits and reintroducing birds into the wild shall be in accordance with regulations to be promulgated by the Secretary.

The Secretary may require, by regulation, the owners of all exempted raptors to keep records and require bands or other permanent markings to distinguish them from wild birds. The records and inventories may be inspected by agents of the Secretary at reasonable times. These records, permanent markers and inventory procedures should not unnecessarily duplicate those now required annually under the Migratory Bird Treaty Act for special purpose permits and falconer permits.

SECTION 5. ANTIQUE ARTICLES

Section 11 of S. 2899 amends section 10 of the act by exempting certain antique articles other than scrimshaw from the application of sections 4(d) and 9(a) of the act. Such articles are exempted from those sections of the law if they were made before 1830, are composed in whole or part of any listed species, have not been repaired or modified with any part or product of any listed species subsequent to the date of enactment of the act (December 28, 1973), and enter the United States through a port designated by the Secretary of the Treasury.

The date 1830 was chosen on the advice of the Customs Service. Articles produced prior to that time can apparently be readily distinguished by experts from articles made prior to that date. It is expected that the Secretary of the Treasury will see to it that the ports of entry designated under this section will be staffed with customs officers qualified to make such distinctions.

A further protection against abuse found in Section 11 of the bill provides that any person wishing to import such an antique article must submit to customs officers at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary, shall, by regulation require.

The bill extends relief to those who imported such antique articles after the date of enactment of the act (December 28, 1973) and who had such antique confiscated by the Federal Government. Such individuals are given 1 year from the date of enactment of S. 2899 to apply to the Secretary of the Treasury for the return of such articles. The applicant has the burden of proving to the Secretary of the Treasury that the confiscated article satisfies the requirements for entry stated above. Only those items in the custody of the United States as of the date of enactment of S. 2899 are affected by this provision. "Custody" is to include those items on loan to institutions of higher learning, museums or any other party and is not limited to those items in the physical possession of officers of the United States.

TELLICO DAM AND GRAYROCKS RESERVOIR

The most difficult issue faced by the conference committee involved two specific exemptions to the Endangered Species Act for the Tellico Dam in Tennessee and the Grayrocks Dam and Reservoir in Wyoming. These projects posed a unique problem to the committee in that they are two of the three projects in the country that have been enjoined as a result of the Endangered Species Act.

The House-passed bill had provided specific exemptions from the Endangered Species Act for these two projects. In contrast, the Senate bill contained no specific projects exemption, and the Senate had specifically rejected attempts to provide specific exemptions for projects outside of the exemption procedure provided in the bill.

The language adopted by the conference committee is an attempt to address the specific project concerns voiced in the House with the Senate desire to preserve the integrity of the exemption process. Essentially, the provisions contained in the conference report would provide that these two projects are to be considered for exemption within 30 days of enactment by the Endangered Species Committee without the necessity or proceeding through the review board process. Because of the obvious regional significance of both of the projects, it was decided that there was no necessity to require that the committee make such a finding of regional significance. If the Endangered Species Committee, in considering one of these projects, makes the findings that there are no reasonable or prudent alternatives to these projects and the benefits of the project clearly outweigh the benefits of alternative courses of action consistent with conserving the species or critical habitat involved, the committee shall grant an exemption. If no decision is made within 90 days after the date of enactment of this act, these projects would receive an automatic exemption from the requirements of section 7 of the Endangered Species Act.

In addition, the conference committee adopted specific provisions which relate only to the Grayrocks Dam and Reservoir Project. These provisions would first require that the U.S. Fish and Wildlife Service render a biological opinion on the effect of the operation of the Missouri Basin Power project on endangered species or their critical habitat. After the biological opinion is rendered. the responsible officials of the Rural Electrification Administration, the Department of the Interior, and the Department of the Army shall require modification of the design or operation of the projects to insure that actions do not jeopardize the continued existence of the species or result in the adverse modification or destruction of its critical habitat. The committee believes that this provision will insure the continued high level of protection for any endangered species involved, particularly the whooping crane.

It is the intent of the committee that if the conflict between the parties in *Nebraska* vs. *REA* in Federal district court in Nebraska is solved prior to the timetable established therein, the requirements of this provision shall be deemed to have been met. It is not the intent to establish a procedure or requirement under the Endangered Species Act that they otherwise would not have been subject to if the above conflict is resolved.

It is the strong sense of the committee that these are the last instances when any project should receive special consideration in the exemption process. To allow any further aberations in this process would make meaningless the work of the Congress in fashioning an orderly exemption process and encouraging those agencies that which to evade the strict consultation provisions of this report.

SECTION 6. PENALTY PROVISIONS

Both the Senate and the House amended section 11 of the act, the penalties and enforcement section in order to alleviate certain enforcement ambiguities of the act. The Conferees accepted the House amendments to section 11; all changes to this section were made after extensive consultation with the Department of Justice.

The amendment reduces the strict liability penalty for others than importers and exporters to $500, makes criminal violations of the act a general rather than a specific intent crime and subjects importers and exporters of fish and wildlife and plants to strict liability penalties of up to $10,000.

By deleting from the civil penalty and criminal provisions of section 11 the phrase, "commits an act which violates," the conferees intend only to make it clear that the act's civil and criminal sanctions apply to violations involving the commission of a prohibited act. The conferees do not intend to make knowledge of the law an element of either civil penalty or criminal violations of the act. In furtherance of this intent, the conferees intend that the standard for criminal violations has been reduced from "willfully" to "knowingly".

Under the amendment provided in H.R. 14104, a tourist who unknowingly imports a listed species into the United States could not be fined more than $500. The conferees assume that in most cases, law enforcement officials will seek the forfeiture of the item rather than impose a civil penalty. The conferees emphasize that the strict liability provision which applies to persons engaged in the business as an importer or exporter of fish, wildlife or plants does not apply to commercial fishing operations which may import fish products into the United States for purposes of human or animal consumption as a part of their business.

SECTIONS 7 AND 8. PENALTY PROVISIONS

By deleting from the civil penalty and criminal provisions of section 11 the phrase, "commits an act which violates," the committee intends only to make it clear that the act's civil and criminal sanctions apply to violations involving an omission or failure to act as well as to violations involving the commission of a prohibited act. The committee does not intend to make knowledge of the law an element of either civil penalty or criminal violations of the Act. In furtherance of this intent, the committee has reduced the standard for criminal violations from "willfully" to "knowingly".

SECTION 9. APPROPRIATIONS

Section 9 of S. 2866 authorizes appropriations of $12,500,000, for the period beginning October 1, 1979, and ending March 31, 1980, to carry out the purposes of this act.

SECTION 10. PLANTS

The conferees adopted a provision contained in both bills which amends section 6(c) of the act to allow the Secretary of the Interior to enter into cooperative agreements with the States for the management and conservation of listed species of plants. This amendment will permit States which develop an adequate and active program for the conservation of listed plants to receive Federal grant-in-aid in the same manner as States now receive funds for resident species of endangered and threatened fish and wildlife.

SECTION 11. NOTIFICATION OF THE HOUSE AMENDMENT WHICH ADOPTS THE PROVISION OF S. 2899

S. 2899 amends section 4(f)(2)(A) of the act to expand present notice requirements and to require public meetings or hearings in connection with the listing of a species and the specification of its critical habitat.

Under the conference report, notice of a proposed regulation (including a complete text of the regulation) would have to be published in the Federal Register 60 days before its effective date. Where critical habitat is specified, such notice must also be published in a newspaper of general circulation within or adjacent to such habitat. Actual notice of the regulation and any environmental assessment or environmental impact statement prepared on it is required to be given to all general local governments within or adjacent to the proposed critical habitat at least 60 days prior to its effective date. This provision does not require actual notice to special districts such as an irrigation or school district. The committee expects that the Secretary would utilize OMB Circular A–95 or some similar device for assuring effective notice to local governments.

Where critical habitat is specified in the proposed regulation, the Secretary must promptly hold a public meeting on the proposed regulation. The meeting must be held in the area in each State where such habitat would be found. The committee intends that the meetings held pursuant to this paragraph be of an informal variety that would permit a colloquy between representatives of the Department and local citizens. If a timely request is filed with the Secretary, a public hearing must be held in the State whose citizen filed the request. It is the intent of the committee that such hearings be held in accordance with appropriate sections of the Administrative Procedures Act and near or within the proposed critical habitat. The committee does not intend that either the meetings or hearings be full adversarial proceedings with all of its inherent expenses to the parties and delays in arriving at a final regulation.

In the rather rare instances where no critical habitat is proposed concurrently with the listing, a public meeting is to be held by the Secretary if a request therefore is filed within 45 days of the publication of general notice.

If, by chance, actual notice is not given to some unit of general local government, such an unintentional and unplanned failure of the notification system shall not invalidate the proposed regulation.

The conference report adds a new paragraph (5) to section 4(f) which would provide that any final regulation adding a species to the list must be published within 2 years after the notice of proposed rulemaking. Any proposed listings not finalized within 2 years must be withdrawn, and cannot again be proposed unless Secretary determines that new information is available which warrants such action. The paragraph provides that any listing which is proposed at the time of the enactment of these amendments would not have to be withdrawn until 1 year after the date of enactment.

The conference report adds a new subsection (g) to section 4 which would require the Secretary to develop and implement recovery plans for listed species. Such plans would be designed to ensure the conservation or survival of each listed species. Recovery teams may be appointed by the Secretary, where appropriate, to aid in developing or implementing a recovery plan for a particular species. Such plans shall be as long and as detailed as is necessary and consonant with their purpose of providing a frame work for actions directed at conserving or, at least, insuring the survival of the subject species. Although recovery plans are implicit in the Endangered Species Act, the act does not specifically mandate recovery plans. As a result, recovery plans have been given a low priority within the Endangered Species Act budget.

The committee intends the Secretary to establish recovery teams to assist with: (1) the development of plans: (2) periodic amendment of plans; and (3) the implementation of the plans. The committee hopes that the Secretary will appoint full-time professionals to insure that planning and implementation proceed expeditiously.

SECTION 12. FOREST SERVICE AUTHORITY

The conference agreed to language of the House version which provides the Secretary and the Secretary of Agriculture with the authority to acquire land for the conservation of listed species including plants. The current act limits this authority to the Secretary of the Interior.

SECTION 13. PUBLICATION IN THE FEDERAL REGISTER

The Conferees adopted a provision of the House bill which amends paragraph 4(f)(3), which requires the Secretary to include with any proposed or final regulation published in the Federal Register a summary of the date on which the regulation is based.

John M. Murphy,
Bob Leggett,
John D. Dingell,
Bo Ginn,
David R. Bowen,
Philip E. Ruppe,
Edwin B. Forsythe,
Managers on the Part of the House.
John Culver,
Edmund S. Muskie,
Malcolm Wallop,
John H. Chafee,
Managers on the Part of the Senate.

[From the Congressional Record, Oct. 14, 1978]

HOUSE AGREEMENT TO CONFERENCE REPORT

CONFERENCE REPORT ON S. 2899, ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Mr. MURPHY of New York. Mr. Speaker, I call up the conference report on the Senate bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee, to review certain actions to determine whether exemptions to certain requirements of that act should be granted for such actions, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Under the rule previously adopted, the conference report is considered as having been read.

The SPEAKER. The gentleman from New York (Mr. Murphy) will be recognized for 30 minutes, and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York (Mr. Murphy).

Mr. MURPHY of New York. Mr. Speaker, the House conferees on the Endangered Species Act amendments have struggled with the Senate conferees through the evening to produce a bill which we firmly believe both Houses can live with.

We began the conference with two considerations: First, the failure to bring back a bill last night or this morning would be intolerable. The Endangered Species Act is not dead if we do not agree on this conference report. The act does not expire, merely the authorization of appropriations. The Department of the Interior appropriation bill contains a provision which provides that no funds can be used to implement the Endangered Species Act without an authorization. If some Members think that is a good thing, let me make one thing perfectly clear—several significant projects could grind to a halt without a reauthorization. The act requires Federal agencies to consult with the Department of the Interior whenever they have a problem with an endangered species. Without funds to implement the act, these agencies will not be able to consult. Therefore, projects would not be able to proceed; and

Second, the Senate and House bills were not really all that far apart. As the House bill reported off the floor yesterday, however, was considerably more developmentally oriented than the Senate bill. I can say with all frankness the guts of the House bill have been retained in the conference report. These include:

First. A procedure under which any project in the country can be considered for an exemption from the Endangered Species Act; the exemption would be considered by a seven member committee, including a representative of the Governor of the affected State or States. If two States are involved, however, the Governors' representatives would only have one vote.

Second. A special exemption for Defense activities. The Secretary of Defense makes the determination whether a military activity should be exempted from the act;

Third. An extremely narrow definition of critical habitat, virtually identical to the definition passed by the House;

Fourth. A special provision for both the Tellico Dam and Grayrocks Reservoir. Because of the importance of these two provisions to the House, I will explain them in some detail. The House provision had provided specific exemption for these two projects. However, the Grayrocks provision as passed by the House would not succeed in having the project go forward. The provision in the conference report will. What we have provided is that these two projects will be considered by the exemption committee within 30 days of the effective date of these amendments. If the committee is unable to decide the issue within 90 days, the projects are automatically exempt from the act. In addition, we have eased the exemption criteria for these two projects;

Fifth. The Conference Report includes the House provision mandating the Secretary to consider the economic impact of designating critical habitat for any species. The Secretary is authorized to alter the critical habitat designation based on this economic evaluation. This provision is the most significant provision in the entire bill.

Mr. Speaker, I can say that literally every other provision in the House bill has been retained by the conferees. These include mandated public hearings in the local affected communities and notice to local governments on any proposed designation of critical habitat.

This is a good bill. It introduces significant flexibility into the Endangered Species Act. But, we have not gutted the act in the process.

Mr. DUNCAN of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Tennessee.

Mr. DUNCAN of Tennessee. Mr. Speaker, I thank the gentleman for yielding. I will be very brief.

It is my understanding that the exemption committee or commission must consider Tellico Dam and the dam in the State of the gentleman from Wyoming within 30 days; is that correct?

Mr. MURPHY of New York. That is correct.

Mr. DUNCAN of Tennessee. And we are already in the exemption process, so they must be considered within 30 days, according to whatever the effective date is?

Mr. MURPHY of New York. It is 30 days from the effective date of this act, and they must act within 90 days thereafter.

Mr. DUNCAN of Tennessee. We are already in the exemption process, is that correct?

Mr. MURPHY of New York. Yes, within the exemption process.

Mr. DUNCAN of Tennessee. Mr. Speaker, I thank the gentleman.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, may I ask the gentleman from New York (Mr. Murphy) whether any portions of this bill are not germane to the bill as it passed the House?

Mr. MURPHY of New York. I can assure my colleague, the gentleman from Ohio, that there are none.

Mr. DUNCAN of Oregon. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Oregon.

Mr. DUNCAN of Oregon. I thank the gentleman for yielding.

I would like to thank the gentleman and to congratulate him and his colleagues for sustaining the House position. I think the gentleman and his colleagues have reached a compromise, in view of the lateness of the hour and the circumstances surrounding this matter, of which the House can be proud. I intend to vote for this bill, and to support the conference report.

I would like to say that I am relying on the gentleman's statement in the debate that the 18-month authorization here is for the purpose of giving his committee the opportunity to reexamine this next year, because I think the amendment expressed on the floor of the House at the time of the debate on the bill reflects the mood of the country. But we still have not yet reached this balance between nature and man that all of us are seeking to find. I hope that my colleagues and I on the Interior Subcommittee on Appropriations can work more closely together in the coming session of Congress so that we do not run into the problems on the floor that we did the other day.

Mr. MURPHY of New York. The gentleman has the assurance of the committee.

Mr. WEISS. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from New York.

Mr. WEISS. I thank the gentleman for yielding.

Yesterday some of us voted against this measure because we felt the compromise agreed to prior to bringing the matter to the floor had been violated by floor amendments and that in fact the legislation had been gutted. Will the gentleman advise me that all of the amendments adopted on the floor were in fact continued in this agreement?

Mr. MURPHY of New York. Basically I would say 95 percent of those amendments were kept intact.

Mr. WEISS. On that basis, those of us who oppose the legislation yesterday I think still have to oppose it today.

Mr. CAVANAUGH. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Nebraska.

Mr. CAVANAUGH. I thank the gentleman for yielding.

I would like to commend the chairman and the committee for the resolution of the many difficult problems in this conference report.

Mr. CAVANAUGH. Mr. Speaker, I wish to commend the action of this conference in protecting the ruling of the House regarding the germaneness of the Roncalio amendment and providing a process for full evaluation of the Grayrocks project before any determination is made to except the project from the Endangered Species Act.

This action by the conferees does not overturn the court suit which has been brought against the Grayrocks project. The district court found that the project is deficient not only under the Endangered Species Act but also under the National Environmental Policy Act and section 404 of the Federal Water Pollution Control Act. The issues raised under the latter two statutes by the suit must still be resolved through judicial and administrative procedures and are not affected by this legislation. We still must assure that water supply and other environmental benefits in Nebraska are not affected adversely by Grayrocks Dam before it can be completed.

Mr. Speaker, all factors regarding fish and wildlife effects will be closely examined before any decision is made to go forward with the Grayrocks project under S. 2899.

Mr. MURPHY of New York. I thank my colleague.

Mr. FORSYTHE. Mr. Speaker, I join the chairman in his description of what was done in what was really a very difficult conference, because the Senate really gave us some tough times. But I think we have brought back a bill that keeps faith with the action of the House last night. I truly hope that this does get the unanimous support of this body because it is so essential that we do keep the Endangered Species Act alive and make sure we can improve it again next year, as we have promised.

Mr. BUCHANAN. Mr. Speaker, will the gentleman yield?

Mr. FORSYTHE. I yield to the gentleman from Alabama.

Mr. BUCHANAN. I thank the gentleman for yielding.

I want to join in congratulating the gentleman and the members of the committee on the substantial improvement in this important legislation and urge adoption of this conference report.

Mr. FORSYTHE. Mr. Speaker, I yield back the remainder of my time.

Mr. MURPHY of New York. Mr. Speaker, at this time I would like to pay tribute to the very distinguished chairman of the subcommittee, the gentleman from California (Mr. Leggett) who has worked in chairing the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries. The Congress will miss the diligence and the brilliance of his work in this field, as well as in the field of national defense where he served so capably.

Mr. FORSYTHE. Mr. Speaker, if the gentleman would yield, I would like to join my chairman in high praise for the subcommittee chairman, the gentleman from California (Mr. Leggett). We have worked many, many hours on the legislation produced by the subcommittee together, and we, I think, have accomplished a great deal. I think it worked out very well. Once in awhile we were not always together, but by and large I think we have been able to produce some good legislation.

I thank the gentleman.

Mr. MURPHY of New York. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

[From the Congressional Record, Oct. 14, 1978]

SENATE AGREEMENT TO THE CONFERENCE REPORT

ENDANGERED SPECIES ACT AMENDMENTS OF 1978—CONFERENCE REPORT

Mr. CULVER. Mr. President, I ask unanimous consent that I may bring up the conference report on S. 2899.

The PRESIDING OFFICER. Is there objection?

Mr. LONG. Mr. President, reserving the right to object, as long as there is no limitation on that can we agree that we will vote on that matter within 10 minutes?

Mr. CULVER. Yes; I think we can vote on it within 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LONG. We will vote on it in 5 minutes.

The PRESIDING OFFICER. Part of the agreement was that we will vote on it after 5 minutes.

Mr. CULVER. Mr. President, I submit a report of the committee of conference on S. 2899 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2899) to amend the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review certain actions to determine whether exemptions from certain requirements of that Act should be granted for such actions, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection the Senate will proceed to the consideration of the conference report.

Mr. CULVER. Mr. President, after nearly 2 years of review, hearings and concerted effort, House and Senate conferees early this morning agreed on a compromise bill to extend and amend the Endangered Species Act of 1973. The conference report on S. 2899, the Endangered Species Act Amendments of 1978, represents, in my opinion, a good effort by all interested members at resolving a number of very difficult issues. Though we may be less than completely happy with the final product, I do feel that it is imperative that the conference report be approved by the Senate and House before adjournment of the 95th Congress.

The agreement worked out by the conferees includes many elements of the original Senate bill, S. 2989, which passed our body by a vote of 94 to 3 on July 19, 1978. The principal feature of the bill, a cabinet-level committee which considers certain projects for exemptions from section 7 of the act, is included in the conference agreement. The committee is composed of the Secretaries of the Army, the Interior, and Agriculture, Chairman of the Council of Economic Advisors, the administrators of EPA and NOAA and a representative of the Governor of the State affected. In the event that more than one State is determined by the Secretary to be affected, each would be represented on the Endangered Species Committee, jointly casting one vote as determined among themselves. Five members would have to vote to exempt a project. Added to that provision is a lower level review board whose purpose is to screen applicants according to a set of threshold criteria which must be met prior to the time the application goes before the Endangered Species Committee.

Mr. President, the Conference Report also contains provisions that concern two specific projects of interest to several of my colleagues in the Senate and in the House.

The conferees agreed that there are unique circumstances surrounding the consideration of both of these projects and therefore, agreed to provisions to expedite their review for an exemption or modification of design. Under the provision approved by the conferees, these projects would be reviewed by the Endangered Species Committee within

30 days to determine whether they should be exempted from compliance with section 9(a). Neither would be subjected to initial screening by the Review Board, nor would the committee be required to find that they are of regional significance. The committee would exempt these actions only if it determines that there is no reasonable and prudent alternative to them and that the benefits of the project clearly outweigh the benefits of other alternatives consistent with conserving the species. Otherwise, project modifications will have to be made or construction of the projects will not be allowed to continue.

The conference committee also adopted specific provisions which relate only to the Grayrocks Dam and Reservoir Project. These provisions would first require the Secretary of the Interior to render a biological opinion on the effect of the operation of the projects on endangered species or their critical habitats. If a species is determined to be affected, the Rural Electrification Administration, the Department of the Interior, and the Department of the Army are required to modify the design or operation of the projects to insure that these actions do not jeopardize the continued existence of the species or its habitat.

The committee firmly holds that this is the last instance in the case of Tellico Dam in Tennessee, which has received considerable attention over a period of several years. I deeply appreciate the cooperation of my distinguished colleagues, Senators Baker and Sasser from Tennessee, who have worked closely with the Committee on Environment and Public Works. Senator Baker of course, is a member of the committee and an original cosponsor of S. 2899.

The second project is one which deeply interests Members from Wyoming, Nebraska, North and South Dakota, and Montana. I refer to the Grayrocks Dam and Reservoir, which is under construction in Wyoming. A recent court ruling has halted further work at this project in part because of the Endangered Species Act during recent weeks.

I know that Senators Burdick, Wallop, McGovern, Zorinsky and Curtis, as well as Congressman Cavanaugh are concerned about the status of this project. I assure them that the conferees worked diligently to reach a fair and responsible resolution of the Grayrocks Dam issue.

When any Federal action should receive special consideration for an exemption. Under the new provisions, good-faith consultation will have to take place before the Endangered Species Committee agrees to consider any project for exemption or modification in case of an intractable conflict between an applicant and an endangered species.

In summary, I believe this is a very sensible solution to a very complex and controversial issue. It provides flexibility in the administration of the Endangered Species Act, and avoids ad hoc exemptions or an emasculation of the act while at the same time maintaining strong protection for our endangered fish, wildlife, and plants.

Mr. President, I want to take this opportunity to express my deep appreciation for the assistance which the distinguished Senator from Maine (Mr. Muskie), from Arkansas (Mr. Hodges), and from Rhode Island (Mr. Chafee) provided as conferees. I especially want to thank the ranking minority member of the senate conferees, the distinguished Senator from Wyoming (Mr. Wallop) for his invaluable contributions and his participation in the formulation of this proposal.

I urge my colleagues to support the conference report.

I yield to the distinguished ranking minority member of the subcommittee, the distinguished Senator from Wyoming (Mr. Wallop).

Mr. Wallop. Mr. President, I thank my colleague. I want to compliment Senator Culver and simply say the year has been long and hard. These negotiations between the House and Senate were long and hard. I think the result is satisfactory and responsible on all sides, and it does no violence to the integrity of the act as it left the Senate.

Mr. Culver. I thank the distinguished Senator.

I yield to the chairman of the Committee on Environment and Public Works, the distinguished Senator from West Virginia (Mr. Randolph).

Mr. Randolph. Mr. President, my reason for rising, this subject matter under the committee jurisdiction came to the Environment and Public Works. It was one of the three new subjects that we undertook, endangered species. That was an assignment, very frankly, that not too many Members would want to grapple with, but the Senator from Iowa (Mr. Culver) undertook that assignment, has chaired the subcommittee, and I commend him. I also commend Senator Wallop of our committee and others for bringing to us a well-reasoned and aways very timely solution to some of the problems in connection with endangered species.

Mr. Culver. I thank the Senator.

I yield to the distinguished Senator from Nebraska.

Mr. Zorinsky. Mr. President, on October 2, 1978, U.S. District Judge Warren Urbom ordered that construction of the Grayrocks Dam and Reservoir near Wheatland, Wyo., should be halted. The main plaintiffs in this case were the State of Nebraska, the National Wildlife Federation, the National Audubon Society, the Powder River Basin Council, and the Laramie River Conservation Council. The defendants were the Rural Electrification Administration, the Corps of Engineers, Basin Electric Power Cooperative, and the Tri-State Generation and Transmission Association and a number of local public power districts. Briefly, the plaintiffs argued that the final environmental impact statement on the Missouri Basin Power project prepared by the Rural Electrification Administration, was not complete enough and that the Corps violated its own regulations by issuing a permit, violating the national Environmental Policy Act and the Endangered Species Act.

Mr. President, allow me to read an article by Bill Kreifel that appeared in the Lincoln Journal:

> U.S. District Judge Warren Urbom Monday issued an order stopping construction of the Grayrocks Dam and Reservoir near Wheatland, Wyoming. Urbom ruled that:
>
> The final environmental impact statement on the Missouri Basin Power project prepared by the Rural Electrification Administration is inadequate and therefore loan guarantee commitments made by the REA for that $1.6 billion project "are unlawful and are set aside."
>
> The Department of Army Corps of Engineers' permit issued to allow construction of the dam and reservoir "is unlawful and is set aside" because of the conclusions of district engineer Col. James Ray "were arbitrary, capricious, and abuse of discretion, and otherwise not in accordance with the law. . ."
>
> The judge's decision was based on testimony taken during a week-long trial and on his review of voluminous written evidence and briefs filed by both sides in the controversial case.

The Nebraska Attorney General's Office, the National and Nebraska Wildlife Federations and the National Audobon Society had filed suit asking suspension of a Corps of Engineers permit to allow Basin to build the dam and reservoir.

The suit contended the corps violated its own regulations by issuing the permit and violated the national Environmental Policy Act and the Endangered Species Act. The dam and reservoir would be used to provide cooling water for the gigantic 1.5 megawatt coal-fired Laramie River Station Power Plant near Wheatland. The Lincoln Electric System is a 13.3 percent owner of that facility.

In his judgment, Urbom said the REA's final environmental impact statement is inadequate because it:

Failed to describe the cumulative effect of the project in light of other proposed irrigation projects in Wyoming and Colorado and predictable ground water pumping in Nebraska.

Failed to discuss the alternative of delaying the project until information of the possible impact on wildlife habitat could be obtained.

Failed to discuss the project's effect on the fisheries and the canal and reservoir system downstream from Lake McConaughy in the event Lake McConaughy went dry.

Failed to describe the project's impact on Nebraska's ground water resources and agricultural enterprises.

The judge also said the REA:

"Failed in its obligation under the Endangered Species Act to consult with the Secretary of the Interior" about the project.

Failed to take action necessary to ensure that the Missouri Basin Project does not jeopardize the continued existence of the whooping crane or result in the destruction or modification of its habitat.

Urbom therefore ordered that the REA is enjoined from approving any loan guarantee for the project until a final environmental impact statement has been supplemented or altered to correct the inadequacies that he found exist and until "such defendants have fulfilled obligations under the Endangered Species Act. . ."

Urbom likewise enjoined Ray and the Corps from issuing any permit until their obligations have been fulfilled. He said the remaining power supplier defendants "are enjoined from proceeding with the construction" until a new permit has been issued or restoration of the previous permit has been made in accordance with his judgment.

Mr. President, I ask unanimous consent that the balance of this article be placed in the Record.

Mr. President, I have been contacted by the Governor of Nebraska, J. James Exon and advised of the State's opposition to any amendment exempting the Grayrocks Dam and Reservoir from the Endangered Species Act.

He feels very strongly that such an amendment would undercut the State's efforts to have a thorough study of the problem and a resolution that will be acceptable not only to the power cooperatives, not only to the Rural Electrification Administration, but to the very real concerns of the State of Nebraska that this project not be hastily constructed without thorough consideration of its impact.

This amendment not only would have unpredictable impact on the Endangered Species Act but would make Congress an unstudied and unthinking participant in a dispute going on in my region of the country involving the State of Nebraska, the Corps of Engineers, a number of power cooperatives, and environmental concerns. My impression is that this amendment is intended to erode this decision and to embroil the Senate in a controversy that should be settled without hastily drafted amendments on the floor of the Senate.

The State is concerned that the project would have tragic effects downstream possibly drying up Lake McConaughy, possibly destroying downstream fisheries, and possibly resulting in declining ground-water along the North Platte and the Platte Rivers. The impact on the habitat of the whooping crane is also a concern of the State in the suit.

Mr. President, I am not opposed to the development of our energy resources. In my State these resources are very, very precious indeed. My first experience in public office was as a member of the Omaha Public Power District and I know only too well the problems that face power cooperatives in Nebraska and the surrounding States. However, I also know that in the West, water is very precious also, so precious that wise water management policy is not served by constructing these dams senselessly, mindlessly, and without regard to the consequences for those downstream who are so vitally dependent on this water. In this case the State government itself saw fit to bring suit and I feel that before any such amendment is passed, an amendment that might have a major impact on this recent judicial decision, it should be thoroughly reviewed by the appropriate committee.

I believe the Joint House-Senate conferees on the Endangered Species Amendments of 1978 have developed a more responsible and reasonable approach than an amendment to exempt this project. Consistent with the philosophy of the Senate-passed bill, S. 2899, they have assured that full consideration be given to the Grayrocks project before any determination is made to exempt the project from the Endangered Species Act. S. 2899 would require that the Grayrocks Dam and Reservoir will be specifically examined by the Endangered Species Committee to determine whether it should be modified, exempted, or halted under the Endangered Species Act. This action provides the necessary procedural requirements to allow for full consideration of all revelant factors.

This legislation establishes an endangered species committee to review those intractable conflicts between an endangered species and a project which have not been resolved under the current process of consultation. To exempt a project, the committee, which is composed of the Secretaries of the Army, the Interior, and Agriculture, the Administrator of EPA and NOAA, the chairman of the Council of Economic Advisors, and a representative of the Governor of the State affected by the proposed action, must review the various alternatives to the project. In this regard, the committee may not grant an exemption unless it determines that there are no reasonable and prudent alternatives, and that the benefits of the projects clearly outweigh the benefits of alternative courses of action which are consistent with conserving the species.

Mr. President, this provision maintains the integrity of the consultation process by requiring a biological opinion be issued by the Fish and Wildlife Service concerning the effect of the project on the critical habitat of the species. After the issuance of this opinion regarding the Grayrocks Dam, the REA, the Secretary of the Interior and the Secretary of the Army may require modification of its design to avoid and adverse effect on the species or its habitat.

The interest of several States are at stake here. S. 2899 assures that those interests are represented because the Government of each State, including Nebraska, will be a member of the Endangered Species Committee. The Governors will, therefore, participate in the review of the merits of this issue. A project exemption requires the support of five of the seven members of the committee.

Mr. President, such a thorough review process will help guarantee that all relevant factors are considered. This is a much better process than having a summary exemption of Grayrocks. This review will take place within 30 days following the establishment of the Endanbered Species Committee. Consequently, there will be no long delays costing taxpayers' dollars or holding up important jobs.

This action by the conferees does not overturn the court suit which has been brought against the Grayrocks project, the district court found that the project is deficient not only under the Endangered Species Act but also under the National Environmental Policy Act and section 404 of the Federal Water Pollution Control Act. The issues raised under the latter two statutes by the suit must still be resolved through judicial and administrative procedures and are not affected by this legislation. We still must assure that water supply and other environmental benefits in Nebraska are not affected adversely by Grayrocks Dam before it can be completed.

Mr. President, all factors regarding fish and wildlife effects will be closely examined before any decision is made to go forward with the Grayrocks project under S. 2899.

Mr. CULVER. Mr. President. I yield to the distinguished Senator from Wyoming, and then I would ask for a vote on the conference report.

Mr. HANSEN. Mr. President, since the Senate last debated the issue of reauthorizing the Endangered Species Act, yet another massive project has fallen victim to the inflexibility of this law—this one located in my State of Wyoming.

We are all familiar with the Tellico controversy, and now, as a result of an October 2 ruling by a Federal district judge in Nebraska, we can add to that the Missouri Basin power project controversy. I predict you will hear a great deal more about this Wyoming project than what I will say here this morning, Mr. President, because all of the repercussions of this ruling are yet to be fully perceived and they will be heatedly debated long after I have taken my leave of the Senate.

In his October 2 ruling, the judge said, among other things, that a section 404 permit issued by the Corps of Engineers pursuant to construction of a project component violated the Endangered Species Act because it failed to consider the potential impact of that component on a whooping crane nesting area located some 350 miles away in another State.

The project for which the 404 permit was issued is a dam in Wyoming that would provide water for a partially completed, $1.6 billion, 1,500-megawatt powerplant intended to serve consumers in more than a dozen towns and cities in seven States.

The judge ordered a halt to construction of the dam, where 180 employees were working, and nullified the Federal financing for the plant, itself, where another 2,200 employees are working.

A temporary stay of the shut-down order has been granted during which there will be a clarification of the order, and the decision is being appealed, but we all know how long it can take to resolve these kinds of environmental lawsuits, and there is one certainty at this point: construction will soon be halted and will not resume for a long time, if at all, unless Congress intervenes. The ramifications of such a halt, Mr. President, will be immediate and devastating.

What is involved here if the Congress does not act are the jobs of at least 2,380 project workers, as well as many other jobs and businesses which are ancillary to and dependent upon the construction of this massive project. The economies of nearby communities, such as Wheatland, Wyo., are tied to this project. The future power supplies of a large area are a consideration. A tremendous amount of money is involved beyond just those millions of dollars that would be spent on the project, itself.

And there is also embodied in this controversy the matter of what we should and can do not only to remedy this specific situation in Wyoming, where we have a half-finished project, but to prevent in the future the use in this kind of indiscriminate and unfair way of environmental laws which obviously are too loosely drawn.

I voted for the Stennis amendment to change the Endangered Species Act in such a way as to exempt projects already authorized and underway. The Supreme Court has already made it clear that even though Congress may not have intended to stop programs and projects at midpoint, as with the Tellico fiasco and now with the Missouri Basin power project in Wyoming, it nevertheless duly enacted a law that very clearly can be used to bring about just such a consequence.

That law needs to be changed, Mr. President. I supported the amendment of my colleague in the House (Mr. Roncalio) to exempt the half-finished Wyoming project from the Endangered Species Act, and I support the conference report on the Tellico project.

But I must say, Mr. President, that what is happening in Wyoming with this project will not be the last controversy of its kind and the Congress next year and in future years is going to have to come to grips with the problem of extensive litigation involving environmental laws every time some sort of development is contemplated.

Mr. CULVER. Mr. President, I call for a vote on the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. MUSKIE. Mr. President, I would like to briefly congratulate Senator Culver and Senator Wallop for working out a difficult problem. I was a member of the conference but could not attend because I was on the floor.

PRESIDENTIAL STATEMENT ON SIGNING S. 2899 INTO LAW, NOVEMBER 10, 1978

ENDANGERED SPECIES ACT AMENDMENTS OF 1978

Statement on signing S. 2899 into law, November 10, 1978

I am signing into law today S. 2899, the Endangered Species Act Amendments of 1978.

In addition to providing needed authorization for the endangered species program, the bill establishes a special seven-member Cabinet-level committee. The Committee will be authorized to exempt programs and activities of Federal agencies from the requirement not to jeopardize the continued existence of endangered or threatened species. While I believe that this new exemption process is not necessary, I hope that as the Committee carries out its responsibilities, it will make the utmost efforts to protect the existence of the species inhabiting this planet. In the past, the act has worked well without this exemption process, because all agencies have made efforts to resolve conflicts and, where necessary, to pursue alternate courses of action. This consultation and cooperation should continue under these new amendments, minimizing the number of requests for exemption. Destruction of the life of an endangered or threatened species should never be undertaken lightly, no matter how insignificant the species may appear today.

I am asking that the Committee members be exceedingly cautious in considering exemptions, and that the exercise of possible national security exemptions by the Secretary of Defense be undertaken only in grave circumstances posing a clear and immediate threat to national security.

In some ways these amendments improve the Endangered Species Act. The consultation process will be strengthened; funds are authorized from the Land and Water Conservation Fund to purchase endangered plant habitat; and provisions for enforcement against commercial violators of the act are improved. Of course, the most welcome provision is the reauthorization of appropriations for the act, which expired on September 30, 1978.

I recognize that this has been a difficult issue. Many Members of Congress have worked very hard to preserve the essence of the Endangered Species Act while allowing flexibility which many perceived to be necessary. I congratulate Senators John Culver, Jennings Randolph, Howard Baker, and Malcolm Wallop and Congressmen John Murphy, Robert Leggett, John Dingell, James Bowen, and Ed Forsythe for their hard work, especially in the hurried last hours of the 95th Congress.

My administration will make every effort to implement these amendments properly and to work with the Congress to secure continued authorization for the Endangered Species Act in the future.

NOTE.—As enacted, S. 2899 is Public Law 95–632, approved November 10.

ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Endangered Species, Part 1. Hearings, 95th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1978. 561 p.

Hearings on Authorization held Feb. 15, 1978; oversight hearings held May 24, 25, June 1, 15, 16, 20, 23, and 28, 1978. "Serial no. 95–39 (Part 1)"

Hearings on implementation of the Endangered Species Act of 1973, authorizing a national program for conservation of endangered

or threatened species of fish, wildlife, and plants. Directs Interior and Commerce Depts. to identify endangered species, and, under section 7, to issue appropriate regulations to preserve their critical habitats, notwithstanding conflicting Federal program authorities.

Focuses on section 7 impact to halt federally assisted projects, with testimony on interdiction of the TVA Tellico Dam Project on the Little Tennessee River, Tenn., because of project's threats to the critical habitat of the snail darter fish.

February 15 hearing considers H.R. 10883, to extend Interior and Commerce Depts. appropriations for ESA programs for fiscal years 1979–81.

Rep. Robin L. Beard (R-Tenn) presents a statement on May 24, and participates in questioning of witnesses on June 15.

Includes submitted statements.

May 24 hearing includes submitted statements and testimony by: L. A. Greenwalt (FWS), J. W. Gehringer (NMFS), C. Stevens (Soc. for Animals Protective Legislation), Reps. Duncan (Tenn.), Lott (Miss.), Beard (Tenn.), R. L. Herbst (Fish and Wildlife and Parks).

May 25 hearing includes submitted statement and testimony by Reps. T. Bevill (Ala.), W. Flowers (Ala.), J. Buchanan (Ala.), C. H. Doss (Public Works, Ala), J. S. Moeller (Uni. of Ala.)

June 1 hearing includes submitted statements and testimony by: C. H. Lyles (Gulf States Marine Fisheries Commission), Z. J. Plater (Wayne State Univ.), C. Stevens (Soc. for Animal Protective Legislation), M. E. Berger (NWF), T. Garrett (Defenders of Wildlife), M. D. Zagata (Audubon), J. L. Reveal (Amer. Soc. of Plant Taxonomists and Botanical Soc.), R. M. Cutler (Conservation, Research and Educ., USDA), D. Marriott (Rep. Utah), F. B. Roche (Off. of Sec., DOD), H. R. Hill (Chief of Engrs., Army), R. O. Wagner (Amer. Assn. of Zoological Parks and Aquariums), G. E. Steele (Zoological Action Committee), J. W. Gehringer (NoAA), J. W. Retan (Ala. Conservancy, Audubon, Sierra Club, Cahaba River Group) M. E. Canfield (GAO), D. Hanson (Tellico Alternatives Study), E. Kaplan (Friends of the Earth), A. Graham (Audubon), H. S. Meyner (Rep. NJ), W. Watkins (Rep. Okla) J. M. Jeffords (Rep. Vt), R. L. Ottinger (Rep. NY), C. H. Warren (CEQ), C. Taylor (Sierra Club, Ornithological Soc. of Okla), D. A. Poole (WMI), M. J. Bean (Environmental Def Fund), C. Van Note (Monitor Consortium), L. Regenstein (Fund for Animals).

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Endangered Species, Part 1. Hearings, 95th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1978. 561 p.

Hearings on Authorization held Feb. 15, 1978; oversight hearings held May 24, 25, June 1, 15, 16, 20, 23, and 28, 1978. "Serial no. 95–40 (Part 2)"

Continuation of hearings before the Subcom. on Fisheries and Wildlife Conservation and the Environment on implementation of the Endangered Species Act of 1973, including section 7 use to halt Tellico Dam Project.

Rep. R. F. Drinan (Mass) participates in questioning witnesses on June 23.

Includes text of Supreme Court decision in *TVA* v. *Hill* upholding Tellico Dam Project interdiction order, June 15, 1978.

Suplementary material includes submitted statements, articles, and Fish and Wildlife Service, Commerce Dept. and USDA written responses to subcom questions, with supporting materials, including:

a. Fish and Wildlife Service Colorado squawfish recovery plan, outline and narrative plan, with budget info;

b. FWS, lists of endangered animal and plant species and critical habitat, either listed or to be listed, 1977–79, with maps for each location;

c. Army Corps of Eng. water resource projects and permit actions that may impact upon endangered and threatened species or adversely effect critical habitat, Mar. 1978.

June 20, 1978 hearing includes submitted statements and testimony by: Z. J. Plater (Wayne St. Univ. Law School), J. F. McCormick (Univ. of Tenn) D. A. Etnier (Univ of Tenn), J. Ritchey and B. Davis (Landowners in Tenn), J. Durham (Intl Indian Treaty Council), D. Burgner (E. Tenn Valley Landowners Assn), W. L. Russell (Little Tenn River Alliance), D. Cox (Trout Unlimited), L. H. King (Cherokee Indians), J. Chapman (Univ. of Tenn), J. Hardin (Resident, Tenn), B. Evison (Grt Smoky Mts Natl Park), W. Skelton (Sierra Club).

June 23, 1978 hearing includes submitted statements and testimony by: S. D. Freeman (TVA), W. King (NY Zoological Soc), S. R. Edwards (Assn of Systematic Collections), R. A. Graham, F. M. Bond (St Rep., NM), R. Thacker (N Amer. Falconers Assn).

June 28, 1978 hearing includes submitted statements and testimony by: L. A. Greenwalt (FWS), R. C. Fischer (Colo. River Water Conservation Dist.), F. G. Simonton (Mid-West Electric Consumers Assn), J. D. Brown (Amer Public Power Assn), W. S. Tucker (Edison Electric Inst).

Additional testimony includes: T. Risenhoover (Rep., Okla), W. Haselton (Natl Forest Products Assn), J. K. Robinson (Chamber of Commerce of USA), D. A. Simpson (Pacific Legal Fdn).

U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Resource Protection. Amending the Endangered Species Act of 1973. Hearings, 95th Congress, 2d session, Apr. 13 and 14, 1978. Washington, U.S. Govt. Print. Off., 1978. 405 p.

"Serial no. 95–H60"

Hearings to amend and extend programs under the Endangered Species Act of 1973 through FY81. Also revises section 7 to establish an Endangered Species Interagency Committee to rule on Federal agency applications for act exemptions in order to carry out national or regional projects expected to impact wildlife adversely when consultations with FWS fail to resolve conflicts.

Focuses on recommendations for enhancing act flexibility, especially merits of section 7 revision in view of past delays and litigation ensuing when Federal projects are halted, notwithstanding conflicting program authorities, on the basis of FWS determinations that endangered species critical habits are threatened.

Includes submitted statements and correspondence throughout.

Hearing of April 13 includes testimony from L. A. Greenwalt (FWS), C. W. Hart (Smithsonian Instn), J. Garn (Sen. Utah), D. S.

Budd (Dan H. Budd and Sons, Inc.), P. A. Widener (United Peregrine Soc and N. Amer. Falconer's Assn), G. Jennings (Amer Fedn of Aviculture).

Hearing of April 14 included testimony from J. W. Gehringer (NMFS), J. A. Helms (Sen NC), C. Mann (Safari Club Intl), J. Kane (William Amer Co.).

Testimony opposing S. 2899 includes M. J. Bean (Environmental Def Fund, Natural Resources Def Council, World Wildlife Fund), Z. J. Plater (Wayne State Univ.), M. D. Zagata (Audubon), T. Garrett (Defenders of Wildlife), R. Bolten (NWF), C. Stevens (Soc for Animal Protective Legislation, Monitor Consortium).

Additional testimony includes: W. S. Tucker (Edison Electric Inst.) K. Balcomb (Colo. River Water Conservation Dist., Southwestern Water Conservation Dist), D. C. Simpson (Pacific Legal Fdn).

U.S. Congress Senate. Committee on Environment and Public Works. Subcommittee on Resource Protection. Endangered Species Act Reauthorization. Hearings, 96th Congress, 1st session, Apr. 3, 1979. Washington, U.S. Govt. Print Off. 1979. 132 p.

"Serial no. 96-H11"

Hearings on the reauthorization of appropriations for Endangered Species Act of 1973.

Hearing includes submitted statements and testimony by: J. Duncan (Rep. Tenn), H. Eschwege (GAO), R. L. Herbst (Fish, Wildlife, and Parks), T. Leitzell (FOAA), T. Lovejoy (World Wildlife Fund), L. P. Silverman (DOI), E. J. Stahr (Audubon).

Additional statements submitted for the record: International Primate Protection League, Natl Forest Products Assn, Pacific Marine Fisheries Commission, Soc for Animal Protective Legislation.

PART V

LEGISLATIVE HISTORY OF 1979 AMENDMENTS TO THE ENDANGERED SPECIES ACT

TELLICO DAM RIDER TO THE ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1980, PUBLIC LAW 96-69

BACKGROUND

Authorization for administration of the Endangered Species Act had been extended only 18 months by the 1978 Amendments (see Part IV) and was scheduled to expire in the middle of fiscal year 1980. Bills to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes (H.R. 2218/S. 1143) passed the Senate on June 13, 1979, and passed the House on October 24, 1979 (see Endangered Species Act of 1973, Appropriation Authorization—below). Proposals to exempt the Tellico Dam project from the protections of the Act had been defeated in Senate Committee and again on the Senate floor. When the House passed H.R. 4388 (the Energy and Water Development Appropriations bill for fiscal year 1980), it accepted by voice vote a non-germane amendment offered by Mr. Duncan to provide for the completion of construction, operation and maintenance of the Tellico Dam and Reservoir project. The Tellico project had been halted because of the presence in the project impact area of the officially endangered snail darter. The Endangered Species Committee, established by the 1978 Amendments (see Part V), had declined to exempt the project from the requirements of the Endangered Species Act, and the authorizing committees of Congress, so far as the Endangered Species Act is concerned, were disinclined to intervene after the intense debate and seeming legislative resolution of the conflict in 1978. When H.R. 4388 was considered in the Senate, the provision exempting Tellico was struck and the bill then passed on July 18, 1979. The measure ultimately went to Conference Committee and the matter of whether or not to exempt the Tellico project was reported in disagreement on July 24, 1979. The House reconsidered the issue in disagreement on August 1, 1979 and by a vote of 258 to 156 reaffirmed its desire to exempt the Tellico project. On September 10, 1979 the Senate voted 48 to 44 to recede from its position and acquiesce to the House version.

The bill was approved by the President and signed into law on September 25, 1979 (Public Law 96-69).

CHRONOLOGY—TELLICO DAM PROVISION OF P.L. 96-69

On February 5 and April 11, 1979 the House Subcommittee on Energy and Water Development of the Committee on Appropriations held hearings on the subject prior to introduction of a bill. On May 10, 1979 the Subcommittee further considered the subject and marked-up a bill to be introduced.

June 7, 1979—H.R. 4388 reported to the House as an original measure, H. Rept. 96–243.

June 14, 15, 18, 1979—H.R. 4388 considered by the House.

June 18, 1979—House Amendment 375 offered by Mr. Duncan approved by voice vote.

June 18, 1979—H.R. 4388, as amended, passed by the House.

June 20, 1979—H.R. 4388 received in the Senate, referred to Committee on Appropriations.

July 12, 1979—H.R. 4388 reported to Senate favorably with amendments by the Committee on Appropriations, S. Rept. 96–242.

July 17, 1979—H.R. 4388 considered by Senate. Senate unprinted amendment number 369 proposed by Senator Culver to delete the Tellico Dam provision added in the House by the Duncan Amendment, was approved by a vote of 53 to 45.

July 18, 1979—H.R. 4388 passed Senate with amendments.

July 25, 1979—House Conference Report 96–388 reported by Committee of Conference with Tellico Dam issue reported in disagreement.

August 1, 1979—House consideration, adoption of motion that House insist on its disagreement to the amendment of the Senate concerning the Tellico Dam and Reservoir project.

September 10, 1979—Senate consideration and adoption of a motion to recede from its amendment concerning Tellico and accept the House position.

September 13, 1979—H.R. 4388, with language providing for completion of the Tellico Dam and Reservoir project, presented to the President.

September 25, 1979—H.R. 4388 signed into law (Public Law 96–69).

PUBLIC LAW 96–69 [H.R. 4388]; September 25, 1979

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1980

An Act making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1980, for energy and water development, and for other purposes, namely:

Energy and Water Development Appropriation Act, 1980.

* * * * * * *

TENNESSEE VALLEY AUTHORITY

PAYMENT TO TENNESSEE VALLEY AUTHORITY FUND

For the purpose of carrying out the provisions of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C., ch. 12A), including purchase, hire, maintenance, and operation of aircraft, and purchase and hire of passenger motor vehicles, $148,677,000, to remain available until expended: *Provided,* That notwithstanding the provisions of 16 U.S.C., chapter 35 or any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generation and other purposes, including the maintenance of a normal summer reservoir pool of 813 feet above sea level.

16 USC 831 *et seq.*

16 USC 1531 *et seq.*

* * * * * * *

FURTHER CONSIDERATION OF H.R. 4388 BEGUN

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1980

Mr. BEVILL. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4388, with Mr. Sharp in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole House rose on Friday, June 15, 1979, the Clerk had read through line 23 on page 27, and pending was an amendment offered by the gentleman from Kansas (Mr. Glickman).

The Chair recognizes the gentleman from Kansas (Mr. Glickman) for 5 minutes in support of his amendment.

The Committee of the Whole House then continued its consideration of the bill.

[From the Congressional Record, June 18, 1979]

AGREEMENT TO DUNCAN FLOOR AMENDMENT ON THE TELLICO DAM AND RESERVOIR

AMENDMENT OFFERED BY MR. DUNCAN OF TENNESSEE

Mr. DUNCAN of Tennessee. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Duncan of Tennessee: On page 28, line 18, strike the period and insert: ": *Provided*, That notwithstanding the provisions of 16 U.S.C., chapter 35 or any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generations and other purposes, including the maintenance of a normal summer reservoir pool of 813 feet above sea level.".

Mr. DUNCAN of Tennessee. Mr. Chairman, I wish to offer this amendment to the bill now before us. The purpose of my amendment is to establish in law the Congress desire to see that the Tellico Dam and Reservoir is completed and used as designed. It does not call for additional funds in this for the TVA.

My amendment would provide in legislature, what we in the Congress intend as far as the status of the project is concerned. The project is 99 percent complete, and over $100 million has previously been appropriated by the Congress and spent on the project. My amendment would make it clear that the Congress intends for this project to be 100 percent complete and used as designed.

Mr. MYERS of Indiana. Mr. Chairman, if the gentleman will yield, the minority has reviewed the amendment and accepts it.

Mr. Bevill. Mr. Chairman, if the gentleman will yield further, we have no objection to the amendment.

The Chairman. The question is on the amendment offered by the gentleman from Tennessee (Mr. Duncan).

The amendment was agreed to.

[From the Congressional Record, June 18, 1979]

House Passage of H.R. 4388, With Amendments

Mr. Bevill. Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. Rostenkowski) having assumed the chair, Mr. Sharp, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes, had directed him to report the bill back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the bill, as amended, do pass.

The Speaker pro tempore. Without objection, the previous question is ordered.

There was no objection.

The Speaker pro tempore. Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The Speaker pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. MILLER OF OHIO

Mr. Miller of Ohio. Mr. Speaker, I offer a motion to recommit.

The Speaker pro tempore. Is the gentleman opposed to the bill?

Mr. Miller of Ohio. I am, Mr. Speaker, in its present form.

The Speaker pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Miller of Ohio moves to recommit the bill, H.R. 4388, to the Committee on Appropriations.

The Speaker pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The Speaker pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The Speaker pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MILLER of Ohio. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 359, nays 29, not voting 46, as follows:

[Roll No. 253]

YEAS—359

Abdnor
Addabbo
Akaka
Albosta
Alexander
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Ashbrook
Ashley
Aspin
Atkinson
AuCoin
Badham
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Benjamin
Bennett
Bereuter
Bethune
Bevill
Biaggi
Bingham
Blanchard
Boggs
Boland
Boner
Bonker
Bouquard
Bowen
Brademas
Brinkley
Brooks
Broomfield
Brown, Calif.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burlison
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Clausen
Cleveland
Clinger
Coelho
Coleman
Collins, Ill.
Conte
Corman
Cotter
Coughlin
Courter
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Davis, Mich.
Davis, S.C.
Derwinski
Devine
Dickinson
Dicks
Diggs
Dingell
Dixon
Donnelly
Dornan
Dougherty
Drinan
Duncan, Oreg.
Duncan, Tenn.
Early
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fazio
Ferraro
Findley
Fish
Fisher
Fithian
Flippo
Florio
Foley
Ford, Mich.
Ford, Tenn.
Fountain
Fowler
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gibbons
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hagedorn
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harris
Harsha
Hawkins
Heckler
Hefner
Heftel
Hightower
Hillis
Hinson
Hollenbeck
Holt
Hopkins
Horton
Howard
Hubbard

YEAS—Continued

Hughes
Hutto
Hyde
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kastenmeier
Kazen
Kemp
Kildee
Kindness
Kogovsek
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Leath, Tex.
Lederer
Lee
Lehman
Leland
Lent
Levitas
Lewis
Lloyd
Loeffler
Long, La.
Long, Md.
Lott
Lowry
Lujan
Luken
Lundine
Lungren
McClory
McCloskey
McCormack
McDade
McEwen
McHugh
McKay
McKinney
Madigan
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Mattox
Mavroules
Mazzoli
Mica
Michel
Mikulski
Miller, Calif.
Mineta
Minish
Mitchell, N.Y.
Moakley
Montgomery
Moore
Moorhead,
  Calif.
Moorhead, Pa.
Mottl
Murphy, Ill.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Ottinger
Panetta
Patten
Patterson
Pease
Perkins
Peyser
Pickle
Preyer
Price
Pursell
Quayle
Quillen
Rahall
Railsback
Rangel
Ratchford
Regula
Reuss
Richmond
Rinaldo
Ritter
Roberts
Robinson
Roe
Rose
Rostenkowski
Roth
Roybal
Royer
Rudd
Runnels
Russo
Sabo
Satterfield
Scheuer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Simon
Skelton
Slack
Smith, Iowa
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Stack
Staggers
Stangeland
Stanton
Stark
Steed
Stenholm
Stewart
Stockman
Stokes
Stratton
Studds
Stump
Swift
Symms
Synar
Thomas
Thompson
Traxler
Treen
Trible
Van Deerlin
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Watkins
Waxman
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wilson, Bob
Wilson, C. H.
Winn
Wirth
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki
Zeferetti

NAYS—29

Applegate
Bedell
Beilenson
Bonior
Brodhead
Cavanaugh
Clay
Collins, Tex.
Conyers
Deckard
Dellums
Derrick
Fenwick
Gephardt
Harkin
Holtzman
Jacobs
Jeffords
Kelly
McDonald
Maguire
Mikva
Miller, Ohio
Mitchell, Md.
Moffett
Obey
Paul
Weaver
Weiss

NOT VOTING—46

Anthony
Beard, Tenn.
Bolling
Breaux
Burton, John
Carr
Chappell
Cheney
Chisholm
Conable
Corcoran
Crane, Daniel
Crane, Philip
Daschle
de la Garza
Dodd
Downey
Eckhardt
Edgar
Flood
Forsythe
Giaimo
Holland
Huckaby
Ichord
Ireland
Livingston
Mollohan
Nolan
Pashayan
Pepper
Petri
Pritchard
Rhodes
Rodino
Rosenthal
Rousselot
Santini
Sawyer
Shuster
Tauke
Taylor
Udall
Ullman
Williams, Ohio
Wilson, Tex.

The Clerk announced the following pairs:

Mr. Santini with Mr. Beard of Tennessee.
Mr. Rosenthal with Mr. Cheney.
Mr. Chappell with Mr. Forsythe.
Mr. Anthony with Mr. Williams of Ohio.
Mrs. Chisholm with Mr. Pritchard.
Mr. de la Garza with Mr. Livingston.
Mr. Giaimo with Mr. Pashayan.
Mr. Ireland with Mr. Daschle.
Mr. Mollohan with Mr. Daniel B. Crane.
Mr. Rodino with Mr. Petri.
Mr. Pepper with Mr. Taylor.
Mr. John L. Burton with Mr. Shuster.
Mr. Dodd with Mr. Conable.
Mr. Downey with Philip M. Crane.
Mr. Breaux with Mr. Tauke.
Mr. Nolan with Mr. Corcoran.
Mr. Carr with Mr. Edgar.
Mr. Eckhardt with Mr. Flood.
Mr. Ichord with Mr. Huckaby.
Mr. Holland with Mr. Scheuer.
Mr. Udall with Mr. Rousselot.
Mr. Ullman with Mr. Charles Wilson of Texas.

Mr. FASCELL changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

96TH CONGRESS
1ST SESSION

H. R. 4388

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, MAY 21), 1979
Read twice and referred to the Committee on Appropriations

AN ACT

Making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

* * * * * * *

TENNESSEE VALLEY AUTHORITY

PAYMENT TO TENNESSEE VALLEY AUTHORITY FUND

For the purpose of carrying out the provisions of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C., ch. 12A), including purchase, hire, maintenance, and operation of aircraft, and purchase and hire of passenger motor vehicles, $146,177,000, to remain available until expended: *Provided,* That notwithstanding the provisions of 16 U.S.C., chapter 35 or any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generation and other purposes, including the maintenance of a normal summer reservoir pool of 813 feet above sea level.

[From the Congressional Record, July 17, 1979]

CONSIDERATION OF H.R. 4388, WITH AMENDMENTS, BEGUN

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1980

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consideration of H.R. 4388, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments as follows:

On page 2, line 11, strike "$2,050,623,000" and insert "$2,053,823,000";

On page 2, line 17, strike "$60,523,000" and insert "$64,523,000";

On page 2, beginning with line 23, insert the following:

Anticipated revenues from Uranium Enrichment Activities earned during the fiscal year and authorized to be retained by this Act, shall be deemed to have been appropriated to the Department of Energy for purposes of 31 U.S.C. 665.

On page 3, line 7, strike "$334,050,000" and insert "$336,900,000";

On page 3, line 13, strike "$2,350,547,000" and insert "$2,388,147,000";

On page 3, line 21, strike "$237,329,000" and insert "$228,029,000, of which $6,165,000 shall be for the Office of Inspector General";

On page 4, line 16, strike "$423,878,000" and insert "$444,478,000";

On page 5, beginning with line 8, insert the following:

Anticipated revenues from Uranium Enrichment Activities earned during the fiscal year and authorized to be retained by this Act, shall be deemed to have been appropriated to the Department of Energy for purposes of 31 U.S.C. 665.

On page 6, line 9, strike "$546,249,000" and insert "$618,249,000";

On page 6, line 19, strike "$31,015,000" and insert "$40,515,000";

On page 8, line 19, strike "one fixed wing aircraft at a cost not to exceed $850,000, and";

On page 8, line 21, strike "$124,900,000" and insert "$122,800,000";

On page 12, beginning with line 10, insert the following:

SEC. 104. Not to exceed 5 per centum of any appropriations made available for the current fiscal year for Energy Supply, Research and Development Activities; Uranium Supply and Enrichment Activities; General Science and Research Activities; Atomic Energy Defense Activities; and Departmental Administration Activities may be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committees on Appropriations and the appropriate authorizing committees of the House and Senate for approval.

On page 13, line 16, strike "$142,296,000" and insert "$140,795,000";

On page 13, line 21, after "Waterway" insert "or would result in adverse diminution of generation at hydroelectric facilities on the Niagara or St. Lawrence Rivers";

On page 14, line 11, strike "$1.440,481.000" and insert "$1.473.566,000";

On page 15, line 17, strike "$850,314,000" and insert "$848,500,000";

On page 17, line 23, strike "$36,905,000" and insert "$34,176,000";

On page 18, line 8, strike "$215,453,000" and insert "$205,953,000";

On page 19, line 8, after "Interior" insert a colon and the following:

Provided further, That currently unobligated funds from appropriations made under this heading for payment of Teton Dam disaster claims shall be available to pay costs to irrigation spaceholder contracting entities for American Falls Dam pursuant to section 7, Reclamation Safety of Dams Act (Public Law 95-578), and shall be nonreimbursable in accordance with the terms of that Act.

On page 20, line 15, strike "$38,194,000" and insert "$32,348,000";

On page 26, beginning with line 22, insert the following:

SEC. 305. Notwithstanding the provisions of the Act of October 1, 1981 (76 Stat. 677), the Secretary of the Interior, in the development of the irrigation lands located in Block 26 of the Columbia Basin project, Washington, shall take such action as may be necessary to assure that the per acre repayment obligation shall be the same as those set forth in repayment contract 11 R 1444, dated October 9, 1945, as amended between the United States of America and the South Columbia Basin Irrigation District, but in no case shall such per acre repayment obligation exceed $131.60.

On page 27, line 23, strike "$356,500,000" and insert "$358,600,000";

On page 27, line 24, strike $224,000,000" and insert "$358,600,000";

On page 28, line 9, strike "$383,000" and insert $257,000";

On page 29, line 7, strike "$358,340,000" and insert "$363,340,000";

On page 30, line 12, strike "$146,177,000" and insert "$148,677,000";

On page 31, line 2, strike "$37,556,000" and insert "$24,002,000";

On page 31, line 3, strike "$4,330,000" and insert "$2,788,000";

On page 3, line 4, strike "$3,112,000" and insert "$2,815,000";

On page 3, line 1, strike "$3,134,000" and insert "$3,119,000";

On page 31, line 9, strike "$21,000,000" and insert "$10,700,000";

On page 31, line 10, strike "$5,400,000,000" and insert "$400,000,000";

[From the Congressional Record, July 17, 1979]

Consideration and Passage of Floor Amendment to Strike Tellico Dam and Reservoir Provision From the Bill

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT

Mr. Robert C. Byrd. Mr. President, there seems to be a disposition on the part of the manager, the ranking manager, the Senator from Iowa (Mr. Culver), and others, to limit the time on the Tellico Dam amendment to 30 minutes rather than 1 hour, to be equally divided. If we can get this agreement the disposition of that amendment would be the last rollcall vote today. I make that request.

Mr. Baker. Will the majority leader yield to me?

Mr. Robert C. Byrd. Yes.

Mr. Baker. Mr. President, I anticipate that 30 minutes will be entirely adequate as far as I am concerned, and I hope there would not be an objection to that.

The Presiding Officer. Is there objection? Without objection, the request is agreed to.

Mr. Johnston. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on the Tellico amendment.

The Presiding Officer. Is there objection? Without objection, it is so ordered.

Mr. Johnston. I ask for the yeas and nays.

The Presiding Officer. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The Presiding Officer. The Senator from Iowa

AMENDMENT NO. 369

Mr. Culver. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The Presiding Officer. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. Culver), for himself, and Mr. Chafee, proposes an unprinted amendment numbered 369.

On page 30, line 13, strike beginning with "Provided" all through line 19.

Mr. **Culver.** Mr. President, the Energy and Water Development Appropriations bill which we are presently debating would exempt the Tellico Dam in Tennessee from the provisions of the Endangered Species Act and any other law, and order its completion. It would do this in spite of the long hours devoted to this issue by the Environment and Public Works Committee which properly has jurisdiction over the Endangered Species Act, in spite of the rational and workable process which was established in the last Congress to address intractible endangered species conflicts, and in spite of the Senate's rejection of the Tellico exemption on June 13, just one month ago. My amendment would strike the Tellico exemption from this bill.

I regret that my colleagues are being asked to consider exemptions for specific conflicts between endangered species and development activities for the third time, I repeat, the third time in less than a year. As you may recall, the last Congress adopted an amendment which Senator Baker and I cosponsored to establish a process to equitably resolve intractible endangered species conflicts while at the same time avoiding their case-by-case consideration by the Congress.

Briefly, the Culver-Baker amendment established a seven-member Endangered Species Committee composed of the heads of six Federal agencies and a representative of the affected State or States. The committee arbitrates those conflicts which cannot be resolved through consultation between the action agency and the Fish and Wildlife Service only after all required processes are utilized. The committee is intended to provide a responsible and sound solution to these problems thereby avoiding ad-hoc technically uninformed congressional exemptions and the emasculation of the Endangered Species Act as a result of short-term pressures which overlook the importance of this law and the species it protects.

I believe the Endangered Species Committee process is working well. The committee has met to consider exemptions for two projects, the Grayrocks Dam in Wyoming and the Tellico Dam in Tennessee. After careful consideration the committee voted unanimously to exempt the Grayrocks project, provided certain measures are taken to protect the affected species, the whooping crane. The committee, after careful consideration, also voted unanimously not to exempt the Tellico Dam, finding that the benefits of completing the project do not clearly outweigh the benefits of alternatives which would protect the endangered snail darter. It is important to emphasize that the representative of the State of Tennessee, who was nominated by the Governor of that State, did not vote to exempt the project and allow its completion.

The Endangered Species Committee is providing just what it was intended to accomplish—a competent national mechanism for resolving conflicts between the protection of endangered species and other legitimate national goals and priorities. To exempt the Tellico Dam from the provisions of the Endangered Species Act would subvert this mechanism, undermine the Endangered Species Act, and place the consideration of each and every conflict back in the hands of Congress.

Before you vote to exempt the Tellico Dam, I believe each Member should ask himself if he is enjoying this debate, because I can assure you that this is just the beginning, just the first of many endangered species conflicts this body will be asked to resolve without rational standards again and again in the months ahead if we ignore the provisions of last year's reauthorization of the Endangered Species Act and provide a specific, single exemption for Tellico.

The authorizing committee—the Environment and Public Works Committee—and the Senate itself have already rejected a similar exemption of Tellico. There is no new information to change matters.

This clearly raises serious jurisdictional questions where all the laws under any of the other authorizing committees could be circumvented merely by the Appropriations Committee taking this kind of ad hoc unilateral action.

I urge my colleagues to uphold our hard work of last year and strike the language to exempt Tellico from this appropriations bill.

Mr. Nunn. I would like to ask a question about the cost-benefit ratio. I never did get that straight in the last debate. As I understand the cost-benefit ratio on this project is not high in the case of being defensible, is that correct?

Mr. Culver. That is certainly correct, even on the basis of 5 percent remaining to complete the project.

We may have to ask unanimous consent to get some extra time.

When the Endangered Species Committee took under advisement this project, Mr. Charles Schultze, the economic adviser to the President and a member of the committee, said that even on the basis of the remaining 5 percent there was not a favorable cost-benefit ratio on this project.

Mr. Nunn. That is the question I wanted to ask. Does the Senator mean that if we eliminated the cost that has already been spent, if we just consider the $35 million to be spent to complete it, as I understand it, even with that consideration the cost-benefit ratio is not favorable?

Mr. Culver. That is correct.

Mr. Nunn. There must be no benefits whatsoever.

Mr. Culver. What the committee did find unanimously is that there are other alternatives to this project, such as river development, which will afford cost-benefit ratios that are more favorable when you take into consideration unmeasured benefits, such as cultural and historic sites, preservation of customary fish and wildlife values, ecological, esthetic, and scenic values associated with the preservation of the river. When those alternatives are considered, then the benefits of the project clearly do not outweigh the benefits of alternatives.

Mr. Nunn. I thank the Senator.

Mr. Nelson. Mr. President, I would like to read some comments made at the time of the original debate. I will just read two paragraphs at this time.

> The Federal Government has now condemned in this project from private landowners 38,000 acres of land, the majority of which is prime agricultural farmland.
>
> TVA is the largest real estate firm in Tennessee. Tellico was never—

And I emphasize this was never—

> formally authorized by Congress, TVA, operating under emergency authority dating back to the New Deal planned the project for completion before World War II. It got sidetracked for a while but the plans were never changed. It is interesting to note that TVA is also the only Federal water resources development agency that can condemn more land than it actually needs for a project,

> speculate with the value of that land, and then resell the land they have condemned to the public at a vast profit from the Government. This is not sound management, it is a "legalized" grand theft of the public.
>
> Only—

And I think this is an important point to remember about this project—

> Only the estimated $700,010 per year from the sale of 22,000 acres of land over the project's 50-year economic life keeps the Tellico program marginally afloat. A cost-benefit ratio has not been updated for over a decade. This again is unique to TVA because the Corps of Engineers, for example, updates their cost-benefit ratios annually.
>
> The fact of the matter is that the land, the 38,000 acres already acquired by the Federal Government, and the value of the agricultural productivity of the farmland is worth more today than all of the estimated benefits of the Tellico project.

I thank the Senator from Iowa.

Mr. Johnston. Mr. President, the Energy and Water Development Subcommittee and the full Appropriations Committee strongly approve this bill. Let me speak first, very briefly—I yield myself 2 minutes.

If the Senator from Georgia will listen, in the environmental impact statement made in 1972 on this matter, the cost-benefit ratio was 1.7 to 1. In 1977, the President rereviewed a great many water projects, this Tellico project included. The Presidential review demonstrated at that time that the remaining costs, excluding the sunk costs, to benefits ratio was 7 to 1. That was the Presidential review team. They have since gotten new figures, since this new endangered species review committee crowd got in there, but it was 7 to 1 in 1977.

The Attorney General, Griffin Bell, argued this matter before the Supreme Court, very forcibly pointing out that the dam was already complete. If Members can see this picture I hold in my hand, I do not know how the snail darter could get past that concrete dam in the first place.

Mr. President, the Government of the United States has done some "dam-fool" things—Mr. President, that is spelled d-a-m—and this has to be the most "dam-fool" thing they have ever done. In the midst of an energy crisis, when the water stored will produce enough electricity for 20,000 homes, not to complete a dam that 's 98 percent complete, that will give electric power—not to complete that on behalf of some kind of snail darter, if that is the law, then the law ought to be changed. If this precipitates other arguments on behalf of other things, other endangered species, I cannot say.

Mr. Talmadge. Is it a fact that they have transferred the snail darter to an adjacent stream and it is thriving and doing well?

Mr. Johnston. It is in the Hiwassee River, that is correct. It is thriving and doing well. Even if we did not finish this dam, if we look at this picture of the work completed, it is a concrete dam. How is the snail darter going to get up through that dam?

Mr. Talmadge. If the snail darter is doing well and thriving in an adjacent stream, it is not endangered any more, is it?

Mr. Johnston. It is either not endangered in the Hiwassee River or if migrating upstream across this concrete dam is necessary to its lifecycle, then it is already dead.

Mr. Culver. On just this one question? I should think the Senator would be interested in the facts.

The fact of the matter is that the Fish and Wildlife Service, in its most recent assessment of that transplant exercise, shows that the snail darter population is down.

The second thing is that the Fish and Wildlife Service cannot certify that that transplant has been there long enough for the Service to make any concrete conclusions, but the initial evidence is perhaps not encouraging as a result of that transplant.

Mr. President, I oppose this amendment to strike the Tellico language from the bill. The Tellico project has been funded by the Congress each year since 1967. The Congress of the United States is not in the habit of funding projects it does not want built. In each of those years, the Tellico project was the subject of hearings and scrutiny by succeeding administrations and the appropriate House and Senate committees. Each year funds were recommended for the construction of Tellico Dam. I think the intent of the Senate to date has been clear: Build Tellico Dam—over a period of 12 years.

Each year the opponents of this project were given the opportunity to present testimony before the appropriate committees. They failed to make their case every year. So they turned to a different approach—an approach designed clearly to thwart the will of the Congress. The mechanism the opponents used to thwart the will of this legislative body was another act of Congress—the Endangered Species Act.

Mr. President, the Endangered Species Act was not even passed by the Congress until 1973—a full 6 years after the Congress approved construction of the Tellico Dam. When the opponents of Tellico realized that the regular legislative process—the appropriations process—was going to continue supporting this project, they turned to a back door approach.

They found the back door in the Endangered Species Act—a perfect mechanism to thwart the will of the Congress and bypass the appropriations process. In other words, the opponents of the project changed the game in the middle of the stream—or dam, in this case.

Still it was not until 1975 that an endangered species, so-called, the famous snail darter, was found in the Little Tennessee River. Since then through a series of legal battles, the opponents succeeded in halting this project.

Now, I was not a Member of the Senate in 1972 when the Endangered Species Act was passed. But, I have talked with many Members who were here at that time. And, based on their comments, I do not believe the Congress intended that the Endangered Species Act was to be used to halt work on other projects which had been approved years before by the Congress. Former Congressman Joe L. Evins, who distinguished himself as chairman of the Public Works Appropriation Subcommittee in the House, for many years has reminded me repeatedly that since the Endangered Species Act was passed, the Congress continued to provide funds for the construction and completion of the Tellico Dam project, even though the snail darter lived there. So, for several years the Congress knew about the snail darter. And, in each of those years the Congress provided funds to complete the project. The intent of the Congress with regards to the Tellico Dam is crystal clear, in my opinion.

So, I say to my colleague that we are not dealing with an environmental question. We are dealing with a direct and serious challenge to the appropriations process. Unless the Senate makes it clear and approves the House-passed language, this project will probably be demolished. The $111 million we have provided through the years will have been wasted. And, it will stand as a monument to an exercise in futility by the Congress in appropriating funds for this project.

I want to say something about the environmental side of the question. I have supported the Endangered Species Act.

Since I have been in the U.S. Senate I have voted to reaffirm the Endangered Species Act and I have voted against weakening that act, Mr. President. But I believe that legitimate endangered species should be protected by this act and maintained.

So, what are the facts surrounding the endangered snail darter? They say that the Little Tennessee River is the only critical habitat for this fish. But, we do not know that, because my information is that neither the Fish and Wildlife Service nor the Tennessee Valley Authority have adequately explored other rivers to find this particular fish.

Mr. President, the mayor of Sparta, Tenn., my friend, Herman Cowden, has advised that the snail darter may exist in a river near his home. A Kentucky biologist says that the snail darter lives in a river in Kentucky. The Fish and Wildlife Service seems reluctant to make a thorough survey of other bodies of water.

I can tell the Senate that the snail darter does live in another habitat. The Tennessee Valley Authority began transplanting snail darters to the Hiwassee River in Tennessee before the fish was listed as endangered. TVA biologists say that the darters have been successfully reproducing now for a number of years. But, the Fish and Wildlife Service says that is not enough. The Fish and Wildlife Service refuses to admit that the snail darter can live in a habitat other than the Little Tennessee River.

Mr. President, the opponents of this project are not interested in protecting the snail darter. They are interested simply in halting the Tellico project.

In closing, Mr. President, I say that the Tellico project is 99 percent complete. A total of $111 million has been spent—more than $1 million for each Member of this body.

I want to see, Mr. President, that today that money is not wasted.

Mr. BAKER. Mr. President, I thank the Chair and I thank the distinguished majority manager of this bill.

Mr. President, I have been in the Senate now for 13-plus years. I cannot think of a single issue where I have found as much difficulty in understanding the opposition to this project, and to the disposition we have made of it in all of those years, as I do in this particular case.

The endangered species, so-called, was discovered after the act was passed. The dam was begun. It was authorized and mostly built before the act was passed. The fish has been transferred to another river, at least in one place, where it is still thriving, the Hiwassee River. There is grave doubt it is endangered or that its habitat is endangered.

We have spent over $100 million building this project and it is 99 percent complete. We are not confronted now with whether or not we ought to build the dam—it is built.

This is the first chance we have had since the speech of the President of the United States, when he said that if we need a refinery, we will build it, or if we need a dam, we will build it.

This is the Senate's first chance to decide whether we mean that or not.

This dam will produce a total of 200 million kilowatts of electricity per year, enough electricity to heat, by electric heat, 20,000 homes.

Mr. President, in the face of those circumstances, if we are serious about trying to find energy sources for this country, if we are serious about being sensible, if we are serious about not suffering the stultification of national purpose by the misapplication of environmental law, this is our opportunity.

The House of Representatives has decided, in its wisdom, that this should be the course, that the dam should be built. We are not dealing with something that we put on the bill on the floor as an amendment. This came from the House. It was approved by the Senate committee. It is before us now on a motion to delete.

Mr. President, the dam should be built; the 1 percent should be built. We should get on with the dedication to the idea that we have to do what we have to do, and in this case there will not be an immediate impact on the environment nor upon the species.

Mr. President, I support legislation which would allow completion of the Tellico Dam project in my home State of Tennessee. By now, most of the issues and arguments concerning this project are familiar to my colleagues in the Senate. These facts are that the project is essentially complete; that the snail darter, which is the basis of the impasse now existing at Tellico, is doing well in a number of other localities besides the one within the area above the proposed dam; and that this being the case it is only reasonable that this project which can meet the electricity demands of 20,000 homes and provides needed economic impetus in an area badly needing such development should be finished.

Mr. President, I would like to further note for the Record that the President, in his recent address to the Nation, stressed the urgency of eliminating unnecessary conflicts between needed energy development and environmental statutes particularly those where such conflict can be resolved with a minimum of harm to the particular natural resource in question. I wholeheartedly agree with this proposal and add that this is exactly the type of situation which exists at the Tellico Dam. The dam and reservoir if completed will produce a significant amount of power and will in no way further endanger the snail darter. I believe that most if not all of my colleagues also agree with the President. This being the case, I urge that they oppose the amendment offered by Senator Culver. Such an action on our part will send a clear message to the Nation and to the recently created Endangered Species Committee that we are serious about our energy problems and that unrealistic conflicts and delays will no longer be tolerated.

As I have said before on a number of occasions, Mr. President, we in Congress who voted for the Endangered Species Act with the intention of protecting and managing our Nation's endangered wildlife resources have found that others with different notions are using this noble act for obstructive ends which are wholly in conflict with the congressional intent for this legislation.

I am seriously concerned that if present trends continue the Endangered Species Act will continue to be perverted from its original intent of providing realistic protection and management of endangered species and instead will become a convenient device to challenge any and all Federal projects.

That is precisely what has happened in the case of the snail darter against Tellico Dam, and if this perverted use of the legislation is allowed to continue, not only will it be a disservice to the wildlife we intended to protect, but indeed the act itself will soon stand in jeopardy.

We in Congress must not let this happen, Mr. President. It need not occur if we in the Congress direct that present rigidity and misuse of the legislation give way to reason and that authority given to the executive branch regarding this act's implementation be exercised with prudence and restraint.

These are my goals in supporting Senator Sasser and the Appropriations Committee's legislation today, and I very much hope my colleagues in the Senate—who surely must share these same concerns and goals—will act in accordance with this intent and oppose the amendment being offered by Senator Culver.

Mr. CULVER. Mr. President, the distinguished Senator from Tennessee reminds us that this is not an amendment that originates in the Senate. I think that is a very important point. This, in fact, is an amendment that originated in the dark of night in the House of Representatives, and I doubt if it is anything to take the occasion to brag about.

I recount for the recollection of the distinguished Senator from Tennessee that on June 13 the Senate, for the second time, ruled in support of the Endangered Species Act.

I thank the minority leader for yielding.

Mr. JOHNSTON. Mr. President, not only did the House pass this measure, as well as the Senate subcommittee and the full Appropriations Committee, but also, what we did was virtually by invitation of the U.S. Supreme Court.

Listen to the words of Mr. Justice Powell, joined by Justice Blackmun, in dissenting, when deciding as follows:

> I have little doubt that Congress will amend the Endangered Species Act to prevent the grave consequences made possible by today's decision. Few, if any, Members of that body will wish to defend an interpretation of the Act that requires the waste of at least $53 million . . . and denies the people of the Tennessee valley area the benefits of the reservoir that Congress intended to confer. There will be little sentiment to leave this dam standing before an empty reservoir, serving no purpose other than a conversation piece for incredulous tourists.

Mr. President, the people of Tennessee in this area were polled on the matter. Thirteen thousand and forty-six responded to the poll. Eighty-two percent voted "Yes" in favor of the dam, 14 percent voted "No," and 4 percent remained undecided.

Mr. President, this is the clearest thing I believe I have ever seen in the Senate. The snail darter was not even discovered before 1973. The act was not passed until 1975. And do you know that the snail darter has no use at all? You cannot use it. You cannot use it as bait. It does not have any intrinsic beauty. It has no use. I do not know what they do when they study it. At least they have them in the Hiwassee River and they have them downstream in the Little Tennessee.

The Endangered Species Act is supposed to protect the endangered species. So that means you cannot complete the dam. But the endangered species in this case, the snail darter, cannot get upstream of the dam anyway. Where is the picture of that dam?

Mr. President, I invite Senators' attention to the fact that this is a concrete dam. Why do you say you cannot complete the reservoir when the snail darter cannot get upstream of the dam anyway?

This special endangered species commission has agreed with that. They say the existence of the dam currently prevents this upstream migration.

So the only question we are left with, Mr. President, is whether you complete this dam by closing the gates and other minor work, which is 98 percent complete and get electric power for 20,000 homes when people are waiting in the gas lines now, when they are using oil in electric generators. That is the question. Ninety-eight percent complete.

I agree with Justice Powell of the Supreme Court when he says that few, if any, Members of Congress will want to confer this result.

Mr. President, I think we have debated the matter long enough. I am ready for the question.

Mr. STENNIS. Mr. President, we all appreciate the fine work of the Senator from Iowa. He is so sincere and has worked on it before and makes a contribution wherever he does put in his effort.

But we have spent the money here for this project. We spent the taxpayers' money. We have spent it and according to law every requirement has been met, and now we need the electricity. We need the energy. Can we refute that? I do not think we can.

We have had this bill before us many times. It is certainly not a casual thing.

As I say, we have made the investment. We need the product. We need the energy. We are cramped for energy and are going to be severely cramped. So I think there is no justification for delay. Just one word—action.

I hope that we can approve this project.

Mr. CULVER. Mr. President, I say to the distinguished Senator from Louisiana that what the Senate Environment and Public Works Committee did was accept the invitation of the Supreme Court to do something about the Endangered Species Act. The resulting something was the amendment by the distinguished Senator from Tennessee and myself to the act creating the Endangered Species Committee and that judgment, the wisdom of doing that, was supported by Congress and it resulted in a unanimous decision that the Tellico Dam project should not go forward.

Second, it is very easy to say what does this mean, what do these weeds mean, what do these animals mean? Why preserve this and why preserve that?

The fact of the matter is we do not know oftentimes what the significance of a species might be. However, we do know that in some of these cases the medical values obtained have proven to represent major breakthroughs. It may be far more important than fish bait.

For example, fruit flies, genetic research; sponges, viral research; the armadillo, leprosy knowledge; and with regard to the fox glove plant—just a weed? It has helped us enormously in this country and throughout the world in dealing with heart disease.

This is what it is all about.

It is easy to make know-nothing statements about what this means or what that means or what the loss is. We do not know.

Finally, let me say on electricity—if I could just have 15 seconds more.

I am quoting from the Interior Secretary with regard to the electricity that supposedly comes from this project, and I quote this:

> Electricity is not available as peaking power and does not add to the capacity of the TVA system.

Finally, Secretary Andrus says that: If this action is supported here in the Senate—

> I intend to urge the President to veto the energy and water appropriations bill if the language on the Tellico remains in the bill.

Mr. HEINZ. Mr. President, last month the Senate debated a similar provision to exempt the Tellico project in Tennessee from compliance with the Endangered Species Act. That amendment was brought up during discussion of the reauthorization of the endangered species program and was rejected by this body. I see no reason why this decision should be reversed just a few weeks later. Such an exemption in the face of the enormous factual record that has been amassed by the Federal courts, the Senate Environment and Public Works Committee, the House Merchant Marine Committee, the GAO, the Tennessee Valley Authority, and a special Cabinet-level committee authorized by Congress last year to study the economics of the project and its alternatives—all would be ignored by allowing this sweeping statutory exemption to remain in the appropriations bill. A very logical procedure was devised by the Environment and Public Works Committee and enacted by Congress last year to deal with exemptions such as this. Serious damage will be done to that process if we allow this provision to remain in the bill.

Unlike the simple exemption that we rejected a few weeks ago, however, this provision would be one of the most sweeping exemptions we have seen. Besides exempting the project from the endangered species law, it would also exempt the project from any other law that might in some way affect the project. It is estimaed that some $35 to $40 million would be necessary to complete the project as a reservoir-based development project. That includes an additional $14.5 million in construction funds necessary to make the dam capable of safely passing the maximum design flood.

The TVA admits that the project is not currently in compliance with several other environmental laws such as the Historic Preservation Act, the Rivers and Harbors Act, and the Water Pollution Control Act. The proposal included in the House bill would exempt the project from all of these laws, and potentially could exempt the project, with massive sums still to be spent, from laws related to hiring practices, labor protections, and other laws that affect the expenditure of Federal funds. Such a sweeping, unspecific statutory repeal for a Federal project such as this sets a dangerous precedent that will likely return to haunt us in the future. The fact that this cuts across so many committee jurisdictions should not be lost on this body.

As to the Tellico project itself, the project was originally designed as an economic development project for several eastern Tennessee counties. Approximately 38,000 acres of land in the valley of the Little Tennessee River, near to or adjacent to the Great Smokey Mountains National Park and the Cherokee National Forest—has been purchased for the project. Much of it, over 15,000 acres, is prime farmland—some of the richest in the State—was largely purchased with condemnation powers. TVA now admits that more than twice as much land was acquired for the project than necessary for a lake, and that the agency had planned to sell these lands at a profit to improve the benefit figures.

The small power benefits—$2.7 million/year—claimed for the project derive not from direct generation of power but from diversion of water through a navigation canal into the Fort Loudon Reservoir generators a few miles away. These benefits, 22.8 megawatts annually, have been termed "negligible" by the TVA in light of many large coal and nuclear-fired projects as well as energy conservation and alternative energy projects now underway by the TVA.

Flatwater recreation, the largest benefit category in the project's original justification, 38 percent, is made somewhat ludicrous when one realizes that there are 22 large recreation reservoirs within a 50-mile radius of the Tellico project area. What would be lost is one of the most prolific stretches of trout-fishing water in the entire Southeast, heavily used by trout fishermen throughout the country, not to mention important historic and archeological areas.

TVA has now said that nearly equivalent benefits can be gained without a reservoir, that most of the costs (lands, roads and bridges) are recoverable, and that more jobs (3,025 jobs without the reservoir versus 2,675 jobs with a reservoir by 1990) will be created through development of the land in intensive farming, development of housing, recreation, and industrial development than would be possible with a reservoir.

For these reasons, I oppose the exemption, support the amendment, and urge my fellow Senators to do likewise.

[From the Congressional Record, July 18, 1979]

SENATE PASSAGE OF H.R. 4388, WITH AMENDMENTS; APPOINTMENT OF CONFEREES

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee (Mr. Sasser), and the Senator from Illinois (Mr. Stevenson) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. Domenici) is necessarily absent.

I also announce that the Senator from Tennessee (Mr. Baker) is absent to attend a funeral.

The Presiding Officer. Are there other Senators present desiring to vote?

Are there others present desiring to vote?

The result was announced—yeas 90, nays 6, as follows:

[Rollcall Vote No. 185 Leg.]

YEAS—90

Armstrong
Baucus
Bayh
Bellmon
Bentsen
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd, Robert C.
Cannon
Chiles
Church
Cochran
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Durenberger
Durkin
Eagleton
Exon
Ford
Garn
Glenn
Goldwater
Gravel
Hart
Hatch
Hatfield
Hayakawa
Heflin
Heinz
Hollings
Huddleston
Humphrey
Inouye
Jackson
Javits
Jepsen
Johnston
Kassebaum
Kennedy
Laxalt
Leahy
Levin
Long
Lugar
Magnuson
Mathias
Matsunaga
McClure
McGovern
Melcher
Metzenbaum
Morgan
Moynihan
Muskie
Nelson
Nunn
Packwood
Pell
Percy
Pressler
Pryor
Randolph
Ribicoff
Riegle
Sarbanes
Schmitt
Schweiker
Simpson
Stafford
Stennis
Stevens
Stewart
Stone
Talmadge
Thurmond
Tower
Tsongas
Wallop
Warner
Weicker
Williams
Young
Zorinsky

NAYS—6

Biden
Byrd, Harry F., Jr.,
Chafee
Helms
Proxmire
Roth

NOT VOTING—4

Baker
Domenici
Sasser
Stevenson

So the bill (H.R. 4388) was passed.

Mr. Johnston. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed Messrs. Johnston, Stennis, Magnuson, Robert C. Byrd, Hollings, Huddleston, Burdick, Sasser, DeConcini, Hatfield, Young, Schweiker, Bellmon, McClure, Garn, and Schmitt conferees on the part of the Senate.

Mr. Robert C. Byrd. Mr. President, for the third time today, I compliment Mr. Johnston.

The Energy and Water Development appropriations bill, considered by the Senate today is a complex measure which contains vitally important projects. The distinguished Senator from Louisiana (Mr. Johnston) has managed this bill admirably under trying circumstances. As chairman of the Energy and Water Subcommittee of the Appropriations Committee, he has overseen the formulation of this bill in great detail.

The distinguished Senator from Oregon (Mr. Hatfield) has contributed in equal measure to the consideration of this bill. His long experience as ranking member of the subcommittee provided additional expertise to the Senate in its deliberations on the Energy and Water Development bill.

Two key areas of national policy are affected by this measure—energy research and development and improvement of our water resources. In many cases, these two issues are inseparable. Hydroelectric projects are the prime examples of that fact. Transportation of energy resources is facilitated by the improvements to navigable waterways included in the bill.

Basic science research carried out by the Department of Energy is funded at a level which will provide the maximum amount of benefit for each dollar. More advanced research into solar power is provided for in order for the United States to have as many energy options available as possible.

In short, the Energy and Water Development appropriations bill coupled with the Interior appropriations bill, which we will consider at a later point, provide a sound structure on which to shape our energy policy and promote the efficient use of our natural resources.

Once again, I commend the subcommittee for its fine work on this difficult matter.

Mr. JOHNSTON. I thank the majority leader.

Mr. DOLE. Mr. President, I support the measure of the Senator from Iowa to strike this statutory override language from the energy and water resources appropriations bill.

I wish to call to my colleagues' attention to the Tellico proposal not just because it attempts to bypass the economic record we have compiled on Tellico, not just because it would create biological disruptions and dam safety problems, but because it would set an unfortunate precedent for blanket statutory exemptions attached to appropriations bills.

Despite 3 years of efforts in this Chamber to study the case in the respective committees, despite a GAO report, despite the elaborate procedures we set up last year to resolve the Tellico issues through a special executive Endangered Species Committee, the Tellico proposal continues to endanger the original mandates set forth through measures such as the Endangered Species Act.

TELLICO PROJECT

Mr. KENNEDY. Mr. President, the senior Senator from Iowa has wisely expressed some of the reasons why we in this Chamber should reject the language exempting the Tellico project from applicable law, and I strongly support his motion.

I want to add a few thoughts. While the environmental ramifications are well known here, other important aspects of this issue must also be kept in mind. A wealth of economic data shows that the dam is not worth the money. And it would seriously dislocate family farms; a rich agricultural valley would be inundated; and we would lose the last remaining stretch of free-flowing river in a 2,500-mile river system. This Chamber must deal with this case on these merits.

I wish to note one particular feature of this issue. This project would destroy one of the most important historical valleys in the Southeast. It would destroy the birthplace of Chief Sequoya under 20 feet of mud and water; it would destroy the Cherokees' sacred town of Chota and Tennessee, the city that named the river and the State. It would hurt a colonial fort and a series of unique archeological sites.

Mr. President, I call on my colleagues to support the motion of the senior Senator from Iowa.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from Iowa. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announced that the Senator from Massachusetts (Mr. Tsongas) is necessarily absent.

Mr. STEVENS. I announce that the Senator from New Mexico (Mr. Domenici) is necessarily absent.

The PRESIDING OFFICER. Are there any Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 180 Leg.]

YEAS—53

Baucus
Bayh
Bentsen
Biden
Boschwitz
Bradley
Cannon
Chafee
Chiles
Church
Cranston
Culver
Danforth
DeConcini
Dole
Durenberger
Durkin
Eagleton
Exon
Gravel
Hart
Hatfield
Heinz
Hollings
Inouye
Kennedy
Leahy
Levin
Mathias
Matsunaga
McGovern
Melcher
Metzenbaum
Moynihan
Muskie
Nelson
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Stafford
Stevenson
Stone
Weicker
Williams
Zorinsky

NAYS—45

Armstrong
Baker
Bellmon
Boren
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cochran
Cohen
Ford
Garn

NAYS—Continued

Glenn
Goldwater
Hatch
Hayakawa
Heflin
Helms
Huddleston
Humphrey
Jackson
Javits
Jepsen
Johnston
Kassebaum
Laxalt
Long
Lugar
Magnuson
McClure
Morgan
Pryor
Sasser
Schmitt
Schweiker
Simpson
Stennis
Stevens
Stewart
Talmadge
Thurmond
Tower
Wallop
Warner
Young

NOT VOTING—2

Domenici
Tsongas

So Mr. Culver's amendment (No. 369) was agreed to.

Mr. President, I thank again the distinguished ranking majority member, Senator Hatfield, and his excellent staff for the cooperation we have had throughout this bill. It really has been a team effort and a bipartisan effort.

I especially thank Proctor Jones, Dave Gwaltney, and Mrs. Gloria Butland, of the committee staff, who have worked day and night, literally, sometimes through the night, for days on end, to put together a very difficult bill.

I think we have an excellent bill here, one that has been well thought out.

I thank all those responsible for their help in getting the bill passed.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield.

Mr. MAGNUSON. Mr. President, as chairman of the Appropriations Committee, I congratulate the Senator for the fine work that has been done on this bill. I know how difficult it is. It is not necessarily the most complex bill. I will not give way to the HEW bill. It is next to the HEW bill in complexity.

Proctor and the others have done a tremendous amount of work. I do not know how many witnesses the committee heard this year. I recall that I used to hear 600 or 700 witnesses.

Mr. JOHNSTON. More than 2,000 appeared this year. We have large groups and delegations—and about 700 or 800 witnesses presented testimony.

Mr. MAGNUSON. It is a tremendous job, and I congratulate the Senator from Louisiana as well as the Senator from Oregon for the way the bill was handled on the floor.

Mr. JOHNSTON. I thank the distinguished chairman of the full committee, who has been a great help in getting this bill passed. He attended many of our committee meetings and has been a great help.

Also, the distinguished ranking minority member, Senator Young, I believe, attended every meeting of the committee. He is an expert on water resource matters as well as an expert on energy, and he has been a great help with the bill.

Mr. YOUNG. Mr. President, will the Senator yield?

Mr. JOHNSTON. I yield.

Mr. Young. Mr. President, this bill has become much more complicated than it used to be. I would not want to be the ranking minority member on the subcommittee now.

The energy part of it is so vast and complicated now that I do not know how the committee can even deal with it. The excellent staff is most helpful.

I commend both the Senator from Louisiana (Mr. Johnston) and the Senator from Oregon (Mr. Hatfield) for the fine job they have done and for the patience and understanding they have exhibited. I also commend the able staff members on both sides, especially Proctor Jones, who I consider one of the most able staff members in the Senate.

Mr. Johnston. I thank the Senator, and I share the Senator's opinion of Proctor Jones.

[From the Congressional Record, July 26, 1979]

House Conference Report 96-388 (To Accompany H.R. 4388)

Conference Report on H.R. 4388

Mr. Bevill submitted the following conference report and statement on the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

Conference Report (H. Rept. No. 96-388)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 15, 25, 26, 33, 34, and 35.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 12, 13, 18, 19, 27, 28, 29, 32, and 36, and agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$2,371,147,000"; and the Senate agree to the same.

Amendment numbered 6: That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$228,279,000"; and the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$588,249,000"; and the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$36,015,000"; and the Senate agree to the same.

Amendment numbered 16: That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$142,145,000"; and the Senate agree to the same.

Amendment numbered 20: That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$34,451,000"; and the Senate agree to the same.

Amendment numbered 21: That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$213,053,000"; and the Senate agree to the same.

Amendment numbered 23: That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$34,761,000"; and the Senate agree to the same.

Amendment numbered 31: That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$34,614,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 1, 3, 7, 8, 9, 14, 17, 22, 24, 30, and 37.

TOM BEVILL,
EDWARD P. BOLAND,
JOHN M. SLACK,
LINDY (MRS. HALE) BOGGS,
BILL CHAPPELL,
JOHN W. JENRETTE, Jr.,
JULIAN C. DIXON,
JAMIE L. WHITTEN,
JOHN T. MYERS,
CLAIR W. BURGENER,
VIRGINIA SMITH,
SILVIO O. CONTE
(except as to amendments Nos. 18, 30, and 37),
Managers on the Part of the House.

J. BENNETT JOHNSON,
JOHN C. STENNIS,
WARREN G. MAGNUSON,
ROBERT C. BYRD,
ERNEST F. HOLLINGS,
WALTER D. HUDDLESTON,
QUENTIN N. BURDICK,
JIM SASSER
(except amendment No. 30),
DENNIS DECONCINI,
MARK O. HATFIELD,
MILTON R. YOUNG,
RICHARD S. SCHWEIKER,
HENRY BELLMON,
JAMES A. MCCLURE,
JAKE GARN,
HARRISON SCHMITT,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4388) making appropriations for energy and water development for fiscal year ending September 30, 1980, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effects of the action agreed upon by the managers and recommended in the accompanying conference report.

Report language included by the House which is not changed by the report of the Senate, and Senate report language which is not changed by the conference is approved by the committee of conference. The statement of the managers, while repeating some report language for emphasis, does not intend to negate the language referred to above unless expressly provided herein.

TENNESSEE VALLEY AUTHORITY

Payment to Tennessee Valley Authority Fund

Amendment No. 29: Appropriates $148,677,000 for payment of the Tennessee Valley Authority Fund as proposed by the Senate instead of $146,177,000 as approved by the House.

Amendment No. 30: Reported in disagreement.

* * * * * * *

[From the Congressional Record, Aug. 2, 1979]

HOUSE COMMENCES CONSIDERATION OF CONFERENCE REPORT ON H.R. 4388 (AUGUST 1, 1979)

CONFERENCE REPORT ON H.R. 4388, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 1980

Mr. BEVILL. Mr. Speaker, I call up the conference report on the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the provisions of clause 2, rule XXVIII, the conference report is considered as having been read.

(For conference report and statement, see proceeding of the House of July 25, 1979.) [Actually, July 26, 1979.]

Mr. BEVILL. Mr. Speaker, the conference report on the 1980 energy and water development appropriation bill is a good report. I am pleased to recommend it to you today for your favorable consideration. Our colleagues will recall that the debate on this bill occurred in the House on June 14, 15, and 18. Mr. Speaker, you will recall that the House passed this bill by a substantial margin: 359 to 29.

Mr. Speaker, we held our conference committee meeting last Tuesday and the report was filed on Wednesday. I can report to you today of our continuing friendship with the members of the other body, particularly the Senator from Louisiana, Mr. Johnston, the chairman of the conference committee, and the Senator from Oregon, Mr. Hatfield, the senior minority member. I also want to thank the House conferees for their support and for their valuable participation during the conference deliberations.

Let me now turn to the various aspects of the conference agreement.

[From the Congressional Record, Aug. 2, 1979]

COMMENTS OF MR. BEVILL CONCERNING TELLICO DAM AND RESERVOIR

TELLICO DAM AND RESERVOIR

Mr. Speaker, the Tellico Dam and Reservoir project is 98 percent complete. Over $110,000,000 has been spent on this project and despite the continued support of the Congress for this important project, the Supreme Court said last year that unless the language of Amendment No. 30 is enacted, this project cannot be completed. Congress has already considered the merits of the Tellico Dam. Last October, the

House of Representatives voted 231 to 157 to exempt Tellico from the Endangered Species Act.

It is foolish to talk about this issue as if the dam and the other structures do not exist. The work has been completed. This project will supply 20,000 homes with valuable electrical energy. The question is whether we are going to complete and use the project as designed so as to confer the valuable project benefits on the people of Tennessee or do we, in the words of Supreme Court Justice Powell:

> . . . wish to defend an interpretation of the [Endangered Species] Act that requires the waste of at least $53 million . . . and denies the people of the Tennessee valley area the benefits of the reservoir that Congress intended to confer.

Mr. Speaker, I have and intend to continue to support the principles of the Endangered Species Act. But I cannot and will not support a determination that requires a waste of taxpayers' money. It is well known that a small minority have sought to use the provisions of the Endangered Species Act to stop the Tellico project. I have not heard one word of opposition from the Members of the Tennessee delegation on this issue. They have been elected by the citizens of Tennessee to represent the public interest, and, as I understand it, they all support the project. At the appropriate time, I will offer a motion to insist on the House position on Amendment No. 30 to retain the Tellico language in the bill.

[From the Congressional Record, Aug. 2, 1979]

HOUSE CONSIDERATION AND ADOPTION OF MOTION THAT IT INSIST ON ITS DISAGREEMENT TO THE AMENDMENT OF THE SENATE NUMBERED 30 (CONCERNING TELLICO DAM AND RESERVOIR AND WHICH THE CONFERENCE COMMITTEE REPORTED IN DISAGREEMENT)

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

The Clerk read as follows:

> Senate amendment No. 30: Page 31, line 8, strike out ": *Provided*, That notwithstanding the provisions of 16 U.S.C., chapter 35 or any other law, the Corporation is authorized and directed to complete construction, operate and maintain the Tellico Dam and Reservoir project for navigation, flood control, electric power generation and other purposes, including the maintenance of a normal summer reservoir pool of 813 feet above sea level.".

MOTION OFFERED BY MR. BEVILL

Mr. BEVILL. Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Bevill moved that the House insist on its disagreement to the amendment of the Senate numbered 30.

PREFERENTIAL MOTION OFFERED BY MR. BREAUX

Mr. BREAUX. Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

> Mr. Breaux moves that the House recede and concur in the amendment of the Senate numbered 30.

The **Speaker** pro tempore. Does the gentleman from Alabama wish to debate this amendment?

Mr. **Bevill**. Yes, Mr. Speaker, I believe I am allotted 1 hour; is that correct?

The **Speaker** pro tempore. The rule would provide 30 minutes on the side. The gentleman from Alabama (Mr. Bevill) is recognized for 30 minutes.

Mr. **Breaux**. Mr. Speaker, I do not think anyone who has been here for any length of time, who knows the record that I have tried to put together in this House, can in any way, shape, form, or fashion classify me as being a crazy environmentalist or some sort of nut when it comes to environmental issues. I have tried to amend the Clean Water Act, to amend the Clean Air Act; I am one of the major sponsors of efforts termed, "Rape, run, burn," which dealt with the State of Alaska. Coming from that background, I stand before the House and ask that we uphold the integrity of this House and the integrity of the legislative process and vote to remove the Tellico Dam project from the authorizing process, from the appropriations process.

I make this motion to recede and concur in Senate amendment 30 not in defense of the snail darter, nor in opposition to the Tellico Dam in the State of Tennessee, but I do so in defense of the legislative process and the integrity of this House, which I think is at stake.

The issue here is very simple. Is it appropriate for the House to attach a rider on an appropriation bill which exempts the Tellico project in Tennessee from all laws? Not just on endangered species, but from all law; not just clean water laws or clean air laws, but all laws which might affect the operation; from dam safety laws, from all laws. The amendment was added late one Monday afternoon with about 40 seconds of debate. It was not printed in the Congressional Record. It was not read on the floor. It was not described, and it was not debated. I think that is a pretty smooth move, but one that I really do not think we should approve of.

I offer a preferential motion to recede from that position and to reinstate and give us a chance to vote against the Tellico Dam project. Let me explain something. All the Members have heard about the Tellico project. We voted on it many times. I, as author of this amendment, have voted to support the project, but I do not do it today because I think that if Members look at it from an economic standpoint it comes out as being a turkey; a turkey not only to us from an economic standpoint but as anything else.

The Endangered Species Act had become unworkable and unreasonable. I am on the committee that wrote that, but we made some changes in the last 2 years. We recommend that projects like the Tellico Dam and Grey Rocks project, a reservoir project, should be considered specially because they are very important projects, that we should have a mechanism to balance the economic value of that project without voting on a snail darter or some other endangered species.

So this Congress by a large margin voted special amendments to the Endangered Species Act. We created a seven-man committee, a seven-person committee, to consider whether to give special exemptions to projects that have been found to be in conflict with the Endangered Species Act. We did it after we debated this issue for 13 days in our committee process. We have created a seven-man committee. The committee has met. It included a member representing the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Council of Economic Advisers, the Administrator of EPA, the Secretary of the Interior, a member from NOAA, and a representative of the State where the project exists, the State of Tennessee. They unanimously—not by a close vote, not by almost doing it—every single member unanimously, after they listened to the merits of whether we should balance this thing economically, voted not to grant an exemption. That is what this House voted for. That is the process we voted for, and I think we should abide by it. We should not say we will go out and play baseball and then when we lose the game, say the answer to that is change the rules. That is not the rule. And also on this we should abide by the decision of the Endangered Species Committee.

It is not a question of whether it is the snail darter or Tellico Dam. It is a question of the integrity of the process of this House. The committee has voted unanimously not to grant an exemption, and I do not think this House, the Congress, wants to be put in the position of every time we have a project having the House sit down and spend days debating the merits of it. We have created a special committee, a seven-man committee, and balanced it with environmentalists and people who believe in construction, and they came down unanimously with the decision that this is not a good project. I support that decision. If it was any other way, I would support it because I have voted for it on a number of occasions.

Some people have said, "Well, it is almost finished; let us go ahead and build it."

TVA said, if you put a pencil to it, to the credit just to complete the remaining 10 percent, the benefits will justify the costs. That just does not wash.

I would just conclude with the fact that we have a process. This Congress has supported that process. Economically, the committee found that it does not wash. It is not a good project. The benefits already there can be used. There are basically roads, and there are structures that are going to remain after the process.

I say let us support the congressional process. Let us vote for the preferential motion I have offered.

Mr. McCloskey. Mr. Speaker, my colleague, Ed Forsythe, ranking member of the Fish and Wildlife Subcommittee. He asked that I make this comment in support of the motion of the gentleman from Louisiana with which I concur. In 1979 the Committee on Merchant Marine and Fisheries conducted 13 days of oversight hearings on the Endangered Species Act, primarily because of the Tellico Dam and the snail darter controversy.

As a result of these hearings, the Congress approved legislation providing for more balance in the Endangered Species Act. The Tellico Dam project was considered under the new criteria of the act and it was determined by the newly created Endangered Species Committee that the benefits associated with completing the project did not outweigh the economic and environmental disadvantages of the project. The Representative from Tennessee who sat on the Endangered Species Committee concurred. A report prepared by the General

Accounting Office supports the conclusion of the committee that benefits of the Tellico Dam will not be proportionate with the project costs.

Despite this overwhelming evidence the House adopted an amendment exempting the Tellico Dam from the Endangered Species Act and from several other statutes including the Federal Water Pollution Control Act, the National Historic Preservation Act, acts regulating dam safety, and the Fish and Wildlife Coordination Act. The House took this action after 42 seconds of consideration during which the amendment was not fully read let alone debated. In addition, the amendment violated the House rules on germaneness as legislating in an appropriations bill.

I might add that I was present on the floor when the amendment was offered by the gentleman from Tennessee, considered as read, quickly accepted by both the majority and minority floor managers without any discussion or debate that would reveal that we were voting the refunding of the controversial Tellico Dam and setting aside five major Federal laws in the process.

The word "Tellico" was the key word in this amendment. It has been under consideration by this House and its committees. I want to submit to my friends on the Committee on Appropriations that this does attack the integrity of the House proceedings. I would not want to come to you with a Fish and Wildlife bill with an agreement that the gentleman from New York (Mr. Murphy) and I had agreed on. I think we all understand the danger of condemnation from the public if we adopt without reading an amendment of this degree of controversy.

I would plead with the members of the Committee on Appropriations that they vote in favor of this motion that we set aside the process by which that amendment was adopted for the substantive reason that the economic and environmental costs of the Tellico Dam outweigh its benefits, and for the procedural reasons that the amendment in question was not understood nor fully considered by the House, and it was also in violation of the House rules as being nongermane. I urge the adoption of the gentleman's motion.

Mrs. Bouquard. Mr. Speaker, I rise in favor of the motion made by the gentleman from Alabama.

Mr. Speaker, there are several important facts which must be fully understood if we are to make the proper decision on the completion of the Tellico Dam. First of all, I have had any number of public meetings, discussions and debates with those both supporting and opposing the completion of this project. My very strong impression, reinforced time and again in public forums, is that the majority of people in this area support the completion of the project.

A second fact, we are not now discussing whether or not to build a dam on the Little Tennessee River. The dam is built. The amount of $103.2 million of the TVA's ratepayers money has been spent. If the project does not go forward the $103.2 million is a total loss.

A third fact, when this project was initiated there was no Endangered Species Act. If there had been, I doubt we would be facing this question again today, but the fact is that the dam was constructed in accordance with the existing laws and regulations.

A fourth fact, this project will produce some 200 million kilowatt hours of electricity each year. This is a sufficient amount to provide electrical energy for 20,000 homes. To meet peak demand of this amount at the present time TVA burns about 15 million gallons of oil. With completion of the project that oil could be diverted to better purposes. The value of that electricity at today's TVA rates is $2.7 million. Given the probability of TVA rate increases this summer and fall, the value of that electricity will almost certainly exceed $3 million by the end of this year. Given the environmental advantages of hydroelectric power, completion of the project will contribute to both clean air and clean water goals.

A final fact, though my list is by no means inclusive. If anyone wonders what has become of our friend the snail darter in this controversy, you might like to know that the present snail darter population in the Little Tennessee River is seven. Some 2,500 of the progeny of the 710 who transplanted in this new habitat last year now survive in the Hiwasee River. A second transplant has been made to the Holston River.

Now my colleagues, if you can, with a straight face, answer that you are willing to write off $103.2 million in expended dollars, and give up some $3 million worth of electricity a year in order to protect the continued existence of seven snail darters, then I think your constituents would want you to oppose this motion. If on the other hand, your district demands of you a certain amount of fiscal responsibility and common sense, then I believe you have no alternative but to support our colleague from Alabama, complete this project, and move on to the more crucial business of this House.

Mr. MYERS of Indiana. Mr. Speaker, I yield 3 minutes to the gentleman from Delaware (Mr. Evans).

(Mr. EVANS of Delaware asked and was given permission to revise and extend his remarks.)

Mr. EVANS of Delaware. Mr. Speaker, I rise in support of the motion by the gentleman from Louisiana (Mr. Breaux) to recede and concur with the Senate on the matter of the Tellico Dam exemption contained in the House version of the energy and water appropriations bill.

There are two issues at stake here. First, should the Tellico Dam be exempted from the Endangered Species Act and other Federal laws so that construction may proceed? Second, should we breach the integrity of the Endangered Species Act as amended only last year, and indeed, tamper with the very rules of the House of Representatives?

I will not consider the issue of the Tellico Dam here in detail, except to say that from what I know of the project it does not make economic sense. Entirely apart from snail darters and the like, it is my understanding that recent studies by the Tennessee Valley Authority and others indicate that a developed river—without a dam—has greater economic potential in terms of jobs and revenues than does a dammed river and reservoir.

My fundamental concern, however, is in the integrity of the legislative process. As a member of the Merchant Marine and Fisheries Subcommittee on Fish and Wildlife Conservation, I participated in the careful and thorough evaluation of the Endangered Species Act in the 95th Congress.

Our subcommittee and committee reviewed the act in detail, and, in the end, we settled on a process which carefully balanced economic and environmental interests. The keystone of these revisions was the establishment of a process by which any project could be considered for an exemption by a Cabinet level review committee. The Tellico Dam project was considered by this committee, and by unanimous vote the exemption was denied.

Now for the proponents of the Tellico project to turn around and come back to Congress for additional consideration strikes me as "sour grapes." I repeat, the Tellico Dam had its day in court and it was found wanting.

Not only did the Tellico proponents come back to Congress for an exemption, but it was done so in a mere 40 seconds of discussion on the floor of the House. Nobody knew what was happening, and in the process, two Rules of the House were violated—germaneness and legislating in appropriation bills.

Mr. Speaker, this is not the way to conduct the business of the House. We established a fair process for considering exemptions to the Endangered Species Act, a process specifically intended to relieve the Congress from the burden of having to review case-by-case exemptions. It is time we reaffirmed our faith in the integrity and wisdom of that process—and in the procedures of the House—by adopting the motion to reject an exemption for the Tellico Dam.

The Senate has twice defeated a motion to grant a Tellico Dam exemption. I urge my colleagues to join with the Senate on this matter and give the Endangered Species Act a chance to work. Otherwise, we make a mockery of the legislative process.

Mr. DINGELL. Mr. Speaker, I thank my dear friend for yielding to me.

Mr. Speaker, it is appalling to me that the House must again take its time and resources to debate an issue that was put to rest in the 95th Congress. The special body that was constituted by a special act of this Congress to deal with exemptions has said that the Tellico Dam should be laid mercifully to rest on grounds that it has no economic merit. I believe that that judgment having been made we should stand with it. I think we should certainly not overrule that on the basis of an amendment adopted without proper notice to the House and under circumstances where its germaneness is open to very serious question and where that action of the House constituted legislation on an appropriation bill.

Mr. Speaker, the issue before us today was the result of an amendment adopted on the basis of 40 seconds of discussion on a proposal that was neither printed in the Congressional Record, fully read, described nor debated. The adoption of the amendment violated the House rules of germaneness and legislating in an appropriations bill. The Members of this body have an institutional responsibility to reject this language.

The issue of the Tellico Dam has been resolved. It was put to rest in the 95th Congress during the extensively debated amendments to the Endangered Species Act. The 1978 amendments to that act created, as one of the provisions, a seven-member Exemption Board to make case-by-case determinations relative to project exemptions from the Endangered Species Act. The Tellico project was given full and thorough consideration by this Board—and an exemption was not granted. Now, we have been asked to overrule that judgment on the basis of an amendment that was adopted under the most questionable circumstances.

On the substance of completing the Tellico Dam, there have been several misleading statements regarding the efficacy of completing the dam and the aggregate benefits which would accrue by removing environmental and other constraints currently impeding its completion.

It has been represented that it has taken $111 million to construct the Tellico Dam. This is simply not true. TVA figures indicate the dam cost $13.8 million in materials and $8.7 million in labor totaling $22.5 million. The major expense of this questionable project was in the purchase of 60 square miles of private farmland and in the construction of roads.

It has also been represented that the completion of the Tellico Dam would constitute a viable and substantial source of hydroelectric power to the TVA system. This statement is not factual. The primary purpose—in the initial construction of the project—was for recreational purposes. The dam has no generators and the only power that could be generated by Tellico would be 22 megawatts produced by water flowing through a small barge canal. Compared to the existing 27,000 megawatt electrical capacity of TVA and the projected capacity of 42000 megawatts by 1985—it is insignificant.

Tellico has already been condemned by the seven-member Endangered Species Exemption Committee because of its very poor benefit-cost ratio and absence of contribution to a worthwhile purpose.

The amendment should be stricken from this conference report and I urge my colleagues to support the Breaux motion.

I urge my colleagues not to negate the excellent work of this body during the 95th Congress. I move that we take immediate action to rid the House of the albatross of Tellico Dam and defeat this amendment.

Mr. CONTE. Mr. Speaker, I rise in opposition to the chairman's motion to insist on the House position with respect to amendment No. 30. I believe the House language pertaining to the Tellico Dam which is the subject of amendment No. 30 sets a bad legislative precedent and only serves to illustrate how desperate the backers of this project must be to see it brought to completion. I cannot believe that those who support this amendment would want to see this same language uniformly applied to all water projects.

Last year, as a result of the Supreme Court decision relating to the Tellico Dam and the Endangered Species Act, this body passed a bill which later became law establishing a Cabinet-level review committee to weigh the value of preserving endangered species against the economic and social benefits of development projects. Now just a year later, the Tellico Dam question is again before us in spite of the fact that the review committee that we ourselves established has rendered a negative decision on Tellico. If it was not our intention to abide by the reasoned decisions of this review committee, why in the world did we establish it in the first place?

The fact of the matter is that this Cabinet-level committee which included a representative of the Governor of Tennessee reviewed the Tellico Dam project very carefully and after reviewing all the facts this committee voted unanimously that the project simply could not be justified on economic grounds. I call your attention to a letter recently sent to the Speaker by Secretary Andrus who chaired that seven-member committee. The Secretary states that among other things influencing their decision the committee found that:

First. The annual cost of the project exceeded its annual benefits;

Second. The dam would not meet even Bureau of Reclamation standards for dam safety since the dam would not be able to contain the maximum flood thought probable to occur; and

Third. Any electricity produced would be an indirect benefit of the additional waterflow created by the dam and would not add to the capacity of the TVA system.

What concerns me the most at this time, however, is not whether the snail darter would become extinct as a result of this project or even whether the project is economically justified. What concerns me the most now is the manner in which the proponents of this project have proceeded through the language of this amendment to try to force this project down the throats of the American people. We have absolutely no sound basis on which to overturn the decision of the Cabinet-level committee we ourselves had established to resolve this matter and neither can I think of a single good reason why this Congress should summarily exempt a water project from all statutory requirement, which is what the language of amendment No. 30 does.

Whether or not this language was originally added to the House-passed bill in the "dead of the night," as some have euphemistically called the proceedings that occurred, it is true that this amendment was not published and was not read in its entirety before being quickly agreed to by the committee. The experience in the other body was just the opposite. The amendment was presented and thoroughly debated and, in the subsequent recorded vote taken, the amendment was defeated. I think we should move to recede and concur to the Senate on amendment No. 30, thereby abiding by the decision reached by the Cabinet-level committee, a decision process we ourselves agree was fair.

Mr. Speaker, I want at this point to read a letter from the Secretary of Interior to the Speaker.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., July 23, 1979.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, U.S. House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: I understand that the House of Representatives will soon be considering the conference report on H.R. 4388, the Energy and Water Development appropriations bill. On behalf of the Administration, I wish to express our grave concern over the House language which specifically exempts the Tellico Dam from the Endangered Species Act and all other provisions of law. I understand that because the conferees reported this provision in technical disagreement, the House will be considering it separately from the rest of the conference report.

Last year Congress directed a special seven-member Committee, which I chair, to determine whether the dam should be exempted from the Endangered Species Act. In doing so, we were directed to balance the project's economic and related benefits against the benefits of reasonable and prudent alternatives which are consistent with conserving the snail darter, which would become extinct if the dam is completed. After due consideration, we found that Tellico does not meet the criteria set forth by the Congress and that on the basis of economic considerations alone, the project is not justified. In fact, when the committee compared the full range of project benefits against only the remaining costs of completing the Tellico Dam ($35.9 million), we found that the costs of the project exceed its benefits.

We also found:

The annual benefits of the project are $6.52 million, compared to annual cost of $7.25 million.

Although project costs to date total $103.2 million, only $22.5 million has been sunk into actual construction of the dam. Remaining expenditures were for salaries, land acquisition, road construction and the like, most of which have produced or will produce benefits regardless of whether the dam is completed.

Tellico does not meet current Bureau of Reclamation standards for dam safety. In its 1978 report TVA states that the maximum design flood is larger than the maximum flood that can be contained by the dam. That is, in the event of such a flood, the dam would be overtopped and breached, resulting in more significant destruction than if the dam had not been built. Furthermore, for less severe floods, flood control benefits are slight, totalling $1.04 million annually, and a substantial portion of these benefits can be achieved by other means, such as local zoning.

Although project proponents claim substantial energy benefits for Tellico, actual benefits total only $2.7 million annually and are based on the cost saved by substituting 200 million kwh of hydroelectric power for power which would otherwise be generated by TVA's existing coal fired and nuclear facilities. The dam itself has no generators but rather creates water flow to provide additional generation for the nearby Fort Loudon Dam. This electricity is not available as peaking power and does not add to the capacity of the TVA system.

Although approximately one third of annual project benefits ($2.5 million) are justified on the basis of flat water recreation, there are twenty-four other such sites located within a sixty mile radius of the dam. In addition, annual recreation benefits of the free-flowing river alternative exceed those of the dam by $600,000.

Creation of the Tellico reservoir would tie up approximately $40 million in private land values, resulting in an annual loss of $4 million in benefits from alternative land uses.

Contrary to the claims of project proponents, the snail darter transplant into the Hiwassee River has not yet been determined to be successful. Based on the most recent surveys, the river's population of the fish is down from a year ago. An additional problem is posed by the rail transport of sulfuric acid in the Hiwassee River gorge since, according to the TVA report, a large acid spill could conceivably decimate the Hiwassee snail darter population.

In addition to the serious economic problems I have described, the Tellico amendment to H.R. 4388 overturns the deliberate and thoughtful processes designed by Congress to deal with conflicts between endangered species and development projects. Moreover, it creates a most serious and undesirable precedent of summarily overturning all statutory requirements relating to the construction of a water project.

Given the uneconomic nature of the Tellico project and the other factors cited above, I intend to urge the President to veto the Energy and Water Development appropriations bill if the language on Tellico remains in the bill, and I urge you to recede and concur with the Senate's position on this matter.

Sincerely,

CECIL D. ANDRUS,
Secretary.

Mr. EDGAR. Mr. Speaker, I would like to commend the gentleman.

I think the gentleman in the well has pointed out the importance of trying to focus attention on negative aspects of the Tellico Dam. It is one of several bad dam projects throughout our Nation that should be not constructed. I think the gentleman makes some very cogent points by detailing the strong objection of Cecil D. Andrus, Secretary of the Interior, to this project.

I hope that the Members of the House have read the "Dear Colleague" letters that have been circulated on this issue and that we can resolve it once and for all tonight.

I would also hope that the President would veto this bill as suggested in the July 23, 1979, letter to House Speaker Thomas P. O'Neill, Jr., by the Secretary of the Interior.

Mr. **Duncan** of Tennessee. Mr. Speaker, the Tellico Dam has had a long and a colorful history. Its construction has always been a part of the overall plan for the Tennessee River. In 1965 and 1966 the Congress held hearings on the proposal and because of the support and merit of the project, funds were appropriated and have since been appropriated by every succeeding Congress, including the Congress in 1968. In fact, funds were approved by the Senate and House in 1978 for the closure and completion of the dam which may I say only cost $1,800,000 to close the dam.

Funding was first approved by the Congress on September 21, 1966, by vote of 354 to 25.

I doubt there is more than two or three Members still in the House that voted against the project funds in 1966.

Those who voted for the project in 1966 and also in succeeding appropriations through the years exercised good judgment.

Mr. Speaker, I know that Congress is not in the habit of starting and funding and stopping projects it does not want to construct. This is why most of the present membership has expressed its desire that the project be completed.

On October 14, 1978, on a rollcall vote of 231 to 157 the House approved an amendment to exempt the Tellico project from the Endangered Species Act. Because the 95th Congress was close to adjournment the Senate did not accept the amendment.

Mr. Speaker, I would now like to talk about the Endangered Species Committee that was appointed. The committee was not properly appointed and, in fact, the Tennessee member was not appointed as required under the act until 1 day after the hearings were held in Tennessee by hearing officers. Neither the Tennessee member lives in the area nor has the Tennessee member or any member of the Endangered Species Committee visited the eastern part of Tennessee where this dam lies. I personally asked them to do so.

Mr. Speaker, the entire committee is still a complete stranger to the local community and its situation. Because of alleged illegal functions of the committee and the failure to disclose vital information, it is now the subject of a lawsuit that is pending in the U.S. Sixth Circuit Court of Appeals in Cincinnati.

This project is in my district, Mr. Speaker, and if I did not think it was a good project and justified I would not be here today advocating its completion.

The gentlewoman from Tennessee (Mrs. Bouquard) has mentioned how it would have saved her home in 1973 if the project had been completed at that time. At that time it had been stopped because of an environmental statement.

Mr. Speaker, I have on several occasions survived the public opinion on the Tellico project. In March 1977, I sent a one-question questionnaire to the three counties directly affected by the Tellico Dam, the Counties of Monroe, Loudon, and Blount.

Of those who responded 1,537 were for completion of the dam and 116 were opposed.

In 1977 the Tennessee General Assembly by almost unanimous vote, and again in 1978, passed a joint resolution advocating completion of the project. When the project was first approved there was not a handful of opposition. After the project was started some opposition did develop but much of it was outside the area. The opposition first tried the route of the environmental impact statement. They were thwarted in this attempt by the Federal courts in Knoxville and although they did bring about some delay, and I did mention the case where the gentlewomen from Tennessee (Ms. Bouquard) lost her home. I would like to call your attention to three letters that have for some reason been hidden until yesterday. The TVA requested three Federal agencies to review this project and they received reports and may I ask did the Endangered Species Committee include these reports in their record? Absolutely not. Did they ask for them?

They were from the Department of Energy Western Area Power Administration, the Department of Transportation and the Department of State's Agency for International Development. I would like to include these letters in the Record. They are as follows:

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 17, 1978.

Mr. S. DAVID FREEMAN,
Chairman, Office of the Board of Directors, Tennessee Valley Authority, Knoxville, Tenn.

DEAR MR. FREEMAN: We appreciate having had the opportunity to review the joint Tennessee Valley Authority (TVA) and Department of Interior (DOI) report on the status of, and the available options, on the Tellico Dam project. We regret that our comments could not be made available within your suggested time frame but are submitted since your conclusions are not yet final.

We found the report to be most interesting and consider that it carefully balances the opposing possibilities of further development. However, [we believe the substantial evidence of support by public officials including the U.S. Congress, the Governor of Tennessee and the Tennessee State legislature, when considered along with the potential economic benefit of completing the original project, is persuasive of the view that the project should be completed.] We consider that the problem of danger to the Snail Darter is being adequately addressed and that a habitat can be developed in which that species can exist.

While the project has had a contentious history, present evidence appears to provide a basis for a decision to complete the project.

Sincerely,

RAY WARNER, *Director,*
Office of Intergovernmental Affairs.

DEPARTMENT OF ENERGY,
Golden, Colo., October 6, 1978.

Mr. S. DAVID FREEMAN,
Chairman, Office of the Board of Directors,
Tennessee Valley Authority, Knoxville, Tenn.

DEAR MR. FREEMAN: Thank you for the invitation to review your draft report "Alternatives for Completing the Tellico Project." We wish to present the following comment for the official record.

We note that Congress approved the initial appropriation of funds for the Tellico Project in 1966. Currently construction of the project as originally planned is 95 percent complete. Expenditures and obligations through May 1978 have totaled $109,000,000. Costs for completion of the original project are estimated as $19,400,000. Additional spillway capacity to handle a new inflow design flood as computed by the USBR would cost an additional $12,500,000.

New evidence indicates the Snail Darter fish can survive and reproduce in the Hiwassee River where it was transplanted in 1975. If additional studies prove that the Tennessee River would no longer be critical habitat, then the Snail Darter could be removed from the endangered species list and reservoir development could proceed.

The report also shows that reservoir development has a superior benefit-cost ratio. Although it stated that "benefit-cost comparisons often have been compromised by the unevenness and unreliability of benefit forecasts," the proven and predictable benefits of clean hydro-power generation are apparent.

Since the oil embargo of October 1973, the National oil consumption has risen above pre-embargo levels despite a 75 percent increase in the retail price of gasoline. Oil imports have risen to the point that they total 43 percent of the oil consumed in this country, causing the attendant problems of inflation, balance of payment deficit, and weakening of the dollar abroad.

Our experience indicates that the demand for hydro-power resources in the Western Area Power Administration marketing area increases as the availability of nonreplaceable oil and gas fuel resources for electric generation decline. The development of new hydro-power resources and their integration with thermal generation provides a desirable and efficient use of the resources available for electric power production.

We trust the Snail Darter will be removed from the endangered species list, or other suitable solutions will be found and, therefore, support the alternative for reservoir development and early completion of the Tellico Project.

Sincerely,

ROBERT L. MCPHAIL,
Administrator.

DEPARTMENT OF STATE,
Washington, D.C., September 20, 1978.

Mr. S. DAVID FREEMAN,
Chairman, Office of the Board of Directors,
Tennessee Valley Authority, Knoxville, Tenn.

DEAR MR. FREEMAN: Governor Gilligan has asked me to review and comment on the draft Alternatives for Completing the Tellico Project, submitted with your letter of August 16, 1978.

The draft report establishes the baseline of evaluation of available options as the present condition of the Tellico project. Therefore the broad consideration is whether it is more beneficial to complete the project as planned, complete and operate it purely as a flood control facility or remove it.

On balance the difficult areas of judgment are the soft, unquantifiable areas such as the cultural, aesthetic and historical. These are highly personal and subjective. The report seems to give greater weight to these factors than would appear appropriate considering the present condition of the project and its history, including the extensive debates conducted in the region and in the Congress before construction started in 1967.

While the report was prepared jointly by TVA and Interior, the Interior team did not include water resources experts from the USGS and the Bureau of Reclamation.

Our overall assessment supports the reservoir alternative based on the following considerations:

Agricultural benefits and programs can be achieved reasonably with any of the alternatives. The reservoir option providing flood protection and water management for supplemental irrigation should provide greater overall benefits for agriculture. While the land used for the reservoir is indeed the prime quality land, it is a small portion of the prime and good agricultural land available in the immediate and down stream area.

The reservoir option offers a better mix of opportunities including industrial and other development. Water transport and a power dimension are increasingly valuable in view of energy requirements. The multi-objective potential of this option is superior to the other options.

Most of the cultural and educational objectives can be adequately achieved with the reservoir option. The one constraint in educational and historical activities which cannot be entirely met is in the actual location of reconstructed and restored facilities on the exact original site. There is considerable disagreement on the critical value of this.

There is no guarantee that the snail darter would survive if nothing in its habitat were changed. The fact that reproduction at another site seems to be proceeding successfully supports this doubt. There is no evidence to indicate any economic or ecological benefit to be derived from protecting the snail darter from extinction. NEPA has definite economic objectives and considers the harmonious interaction of man and his environment important.

The benefit-cost evaluations show a smaller spread in calculated benefits for the reservoir option indicating a better basis for these values. The cost of removing the dam is greater than that required to complete the reservoir, while the reservoir option yields a higher benefit-to-cost ratio.

Sincerely yours,

FRANK A. DIMATTEO, P.E.,
Director, Office of Engineering.

Mr. Speaker, there are hundreds of people including this Member who believe that the snail darter thrives and reproduces in many streams and rivers in Tennessee, Kentucky, North Carolina, and elsewhere. From June 1975 to February 1976, 710 snail darters were transferred from the Little Tennessee River to the Hiwassee River. In August 1978, a survey of the Hiwassee population reveals a present population of over 2,500 snail darters.

A second transplant is being successfully carried out now in the Holston River while the population of the Little Tennessee has declined and perhaps the Tellico project has aided the survival of the snail darter by removing it to a free-flowing river. The Little Tennessee River was never a free-flowing river, regardless of what the Secretary might have said.

Mr. Speaker, the Little Tennessee has not been a flowing river since about 1917. The return of the Little Tennessee River to a free-flowing stream would require not only the removal of the Tellico Dam but would require the removal of 4 other dams as well. I hope we will not overlook the human considerations of this controversy. Should a worthless, unsightly, minute, unedible minnow outweigh a possible injustice to human beings?

A great deal has been said about farmland.

Mr. Speaker, the land has already been sold. The farmers do not own the land. They have given up their homes and their land for the projects. Roads have been taken out and homes have been demolised. The bridges are out. The topsoil has been taken off the land that the water will cover. Stumps and debris have been put in the area preparing it for flooding when the dam is closed.

Mr. Speaker, even if the original owners could repurchase their land they would perhaps be financially unable to do so. Would it be just and right to sell the land to other prospective land purchasers? Should it be sold in international land sales as has been suggested?

The U.S. Government promised these people a dam and a reservoir. Now, the people wonder whether they have surrendered their homes for nothing, whether they have been duped by a government that says one thing and does another.

Have the taxpayers paid their taxes to build a project that is being terminated after the expenditure of millions of dollars and there is no validity to the fact that you do not count the wages paid to the wage earners as part of the cost of a project? That is the way, I suggest, some Government agencies figure their costs of certain projects.

Mr. Speaker, the people feel betrayed. It is a case of abandoned promises, of raised expectations ending in disappointment.

Mr. Speaker, I feel that the Congress will right this wrong. The money has been spent and estimates given in 1977 showed that removal of the dam would cost over $16 million and because of inflation that estimate, without doubt, today, is conceivably more.

Mr. Speaker, the President has sounded the call for nonpetroleum energy sources as the gentlewoman from Tennessee (Mrs. Bouquard) stated. The project will produce 200 million kilowatt hours of electricity per year, enough electricity to furnish heat for 20,000 homes.

Mr. Speaker, there have been some direct and implied statements that the amendment to H.R. 4388, authorizing the completion of the dam was something that happened in the late hours of the day when few Members were present. That is an incorrect statement. The House was full of people. The statement also reflects against the credibility of the chairman of this committee, the gentleman from Alabama (Mr. Bevill), and the ranking minority member, the gentleman from Indiana (Mr. Myers), and also this Member.

I think all of us know who these men are. We know they are men of highest credibility and highest integrity.

Mr. Speaker, the amendment was distributed through this House. It was on the table Friday before it came up on Monday and if we knocked out everything that this House when minority and majority agree to accept certain amendments, we would certainly have a lot less laws today than we now have on the books.

It was handled in a proper manner, and, as I say, the entire Tennessee delegation supports this. It is not like Dickey-Lincoln. If they do not want a dam up there, that is all right with us.

But we do support this, and we want the Government to do what they said they would do and not let the judgment of the Congress be transferred to some hasty committee that failed to give consideration not only to the Congress but also to the people of our area.

Mr. Quillen. I want to associate myself with the remarks of the gentleman from Tennessee (Mr. Duncan), and I commend him for the very fine statement he has made.

When we look at this realistically, it seems absurd certainly to have a little 3-inch snail darter stop the completion of a dam in which the taxpayers have already invested over $100 million. I made that point in the Committee on Rules when the extension of the Endangered Species Act was before us last year. I had a goldfish there which I had sent out for and bought, a small goldfish, and I put it in a pitcher and displayed it in front of me. I held it up for all to see in the committee, and I said, "A fish this small is stopping the construction of this dam, the Tellico Dam."

Where are our priorities, and what should we do? The gentleman from Tennessee (Mr. Duncan), in whose district the dam is located, has explained the situation and has put forth a good statement. I believe we all should support his views.

Mr. Speaker, I thank the gentleman for yielding.

Mr. Wampler. Mr. Speaker, I think the gentleman from Tennessee (Mr. Duncan) has very ably described the situation that is before the House tonight. Approximately one-third of the congressional district that I represent lies within the watershed of the Tennessee Valley.

I have followed the history of this project with great interest, and the Committee on Appropriations has considered this matter very carefully. It seems to me they have given it fair and adequate consideration. As we are grasping for solutions to the critical energy problem facing our Nation this very night, it seems to me that only commonsense would dictate that we proceed with the completion of this project so that it can serve the purposes for which it was originally envisioned, and for which it has been constructed.

Mr. Speaker, I urge all my colleagues to vote no on the motion to recede and concur and support the committee's position.

Mr. Duncan of Tennessee. Mr. Speaker, I urge all of my colleagues to support the Committee on Appropriations.

Mr. MYERS of Indiana. Mr. Speaker, terms like "Tellico" and "Dickey-Lincoln" have become household words in this House. Some of us feel like we have been up and down this path so many times, we have the merits and the arguments committed to memory.

The impression has been left here today—and it comes from statements made in the other body as well as from other sources—that the amendment offered in the House a few weeks ago on this bill was passed in the dark of the night, in violation of House rules. That was not the case.

During the proceedings today on the Emergency Energy Conservation Act of 1979, this same procedure was used four times. I refer to accepting language that was not read. It is a common practice. It was not done for the purpose of misleading our colleagues because most of us understood the language. The gentleman who spoke earlier suggests that we somehow violated the rules of the House. I am sorry if he had that impression because it was not intended.

Mr. BREAUX. Mr. Speaker, does the gentleman mean to give the House the impression that in four instances where the amendments were not read, in all four instances the amendments were not germane to the bill, as was the case in this instance?

Mr. MYERS of Indiana. Tellico Dam was initiated in 1967. Would the gentleman agree with that?

Funds were appropriated by the Congress for the construction of the Tellico Dam in most of the subsequent years. Congress intended that the project be constructed.

Mr. BREAUX. Mr. Speaker, the real point on the amendment that was adopted was the fact that it exempted the Tellico Dam from all laws. I am sure the members of the Committee on Appropriations did not consider that to be appropriation language. It was a major exemption for the dam that was added to comply with all the laws of the United States of America.

That very much tends to sound like authorizing language to the gentleman from Louisiana.

Mr. MYERS of Indiana. Mr. Speaker, the House adopted an amendment to the endangered species authorization to exempt Tellico from the endangered species laws. The vote was taken on October 14 of last year.

Mr. Speaker, the Record had not been printed before the conferees from this body caved in to the other body and took that language out. It had passed this House rather substantially last fall. It is not something new to this body.

I would also like to point out that this project was started long before the Endangered Species Act was passed. It was about the same time we started construction here on the Washington subway, and because it was already under construction, it was grandfathered in. It was exempted from the Endangered Species Act provisions. So there is a good case there, and there are many precedents.

Mr. Speaker, Griffin Bell, the Attorney General, appeared before the Supreme Court last year and said that Congress time after time had expressed its intention that the Tellico Dam should be completed. The Supreme Court invited this amendment. It was done in the open; it was not done in the dark of night. It is common procedure. We did proceed under the normal rules and customs of the House, and we merely responded to the invitation by the Supreme Court that Congress should act in this fashion if it wanted the reservoir to be completed.

Over $117 million has been appropriated to date. It will take just a very small sum to finish this project.

Mr. Speaker, I will state to my friends that the issue, frankly, is not one of jurisdiction. The issue is whether we want to see $117 million of our taxpayers' money wasted with absolutely no benefits. The Court has cited in the dissenting views that it would be a waste of money. They were sure that Congress would see fit to insure that the dam is completed because not to do so would be a waste of the taxpayers' funds.

So that is the issue today. We can disguise it if we want to and say it is a jurisdictional problem, but the real issue is: Shall we waste the taxpayers' money, or shall we give the people of Tennessee the benefits from the investments that have already been made?

Mr. Bevill. Mr. Speaker, I will make this brief. We have been through this several times. This project, the Tellico Dam, was stopped because of a snail darter that was placed on the endangered species list.

I would like to point out, as the Members know, we supported and voted for the Endangered Species Act. You and I support that act. It is a good act. We are not apologizing for the Endangered Species Act, but you and I may disagree on how it is being interpreted.

That is the issue here today. The people in Tennessee want this dam completed. Every Member of the Tennessee delegation has signed a letter to me urging its completion. All eight House Members from Tennessee signed the letter. They want the dam completed. Are we going to stand here and argue about jurisdiction in this situation?

Let us talk about the snail darter a little bit. I met Friday with the TVA biologists, who are favorable to the snail darter. We paid $850,000 for a report on the snail darter and the studies that have been made. We paid for moving the snail darter from the Little Tennessee River, where the Tellico Dam is, to the Hiwassee River. This effort has been going on now for about 3 years. We are spending money to protect the snail darter. That is what the people want. They want the snail darter protected. I do and you do, and we have protected it. The snail darter is safe.

Let me tell you what it says in this study:

> The snail darter we are transplanting were seined from the Little Tennessee River. A total of 710 snail darters were transplanted to three sites in the Hiwassee. Periodic surveys of the areas where transplants were made show that the darters remain in good condition. Observation of young snail darters one year later indicates successful reproduction and recruitment in the Hiwassee. This strengthens confidence that the future of the snail darter can be assured.

Let me turn to another statement. This is the biologists' report, the biologists who have followed the snail darter all the way through this issue.

> Two years of successful reproduction and juvenile recruitment in the Hiwassee River shows the transplant to be successful to this time. There is no reason to believe that the Hiwassee River snail darter population will not be a self-sustaining population.

We have done our duty. We have taken care of the snail darter. We have moved it. Actually, it is doing better now than it was doing in the Little Tennessee River. They told me last Friday that there were thousands of them now in the Hiwassee River. They moved 710 over there, and now there are thousands. So the snail darter is taken care of.

I know people are very sincere about this. The Secretary of Interior has been quoted tonight. He testified before my committee. He said, "We know that the Endangered Species Act is being used by some people." That was his testimony, and it is in the record.

We know that is taking place. You and I know that.

So we have a small dam here. Maybe you will say, "That is not much oil that it will save." The undisputed testimony shows that the water from this dam will go to the hydroelectric plant down below it and will provide heat for 20,000 homes.

What we have is a project that is 99 percent complete. The people want it. The people of Tennessee want it. You hear these folks who are opposing it, and making all this noise. You do not hear that from the people in Tennessee. So we need to move on. We have $100 million invested in this project, and I do not think that you and I want it to be a monument to this Congress action, against the will of the people of Tennessee, against the delegation, the elected representatives of the people of Tennessee, who want this project completed. The snail darter is safe. Now let us make some energy.

The Members heard the gentlewoman from Tennessee talk about her home being washed away because of the floods that could have been prevented. So, we know we need the energy; we know we need the flood control; we know that the industrial park is important; we know that the recreation part of it is important. We could go over these points too. But this is essentially an energy project. We must start taking these things more seriously. Actually, we are doing just as the Supreme Court of the United States suggested we do. They said, "If Congress wants it, they ought to provide for it." That is what the gentleman from Tennessee provided for in his amendment.

Mr. Ritter. Mr. Speaker, I would like to commend the gentleman from Alabama (Mr. Bevill) for his remarks and I would like to point out that the President, in his domestic policy review of solar energy, talked about reaching a 20-percent goal by the year 2000. The Members may not realize this, but in that 20 percent he included hydroelectric, he included both "low-head" and "high-head"—hydro; yes, he included energy generated by hydroelectric dams, big and small.

It is indeed hard to link hydroelectric with solar energy. But nevertheless that is part of the overall energy equation whether as part of "solar energy" or not. That is part of the ability of this country to reduce its dependence on imported energy. Now we are going to have to explain to the American people all over this country how $100 million of the taxpayers' money has been spent and wasted, how a snail darter, which has now been taken care of, shifted into other hospitable waters, still can gum up the works. We are going to have to explain to the American people how we cannot even get our act together to go ahead with an energy producing dam that is 99 percent complete. Is it any wonder that the American people's confidence in its leadership is so low? I think those Members who vote against this Tellico Dam completion will have a very rough time explaining this waste to their constituents at a time of severe energy shortage and a need to move forward.

Mr. **Bevill**. I thank the gentleman for his contribution.

Mr. **Rudd**. Mr. Speaker, I would like to associate myself with the very fine remarks of the distinguished gentleman in the well. This dam provides energy, it provides flood control, it enhances navigation on the river, and it provides recreation, all beneficial to humankind and the citizens of this country, and I see no reason why a snail darter that does not even provide food for humankind should be under consideration at this time.

I hope that this motion will be defeated.

Mr. **McCloskey**. Mr. Speaker, I think the gentleman in the well mistakes the purpose of this motion. I think many of us might agree, as the gentleman who made the motion did, with the merits of the Tellico Dam. But I ask the gentleman, is not this in fact legislation on an appropriation bill? And I have heard the gentleman on countless times, and the rest of us who are not on the Appropriations Committee have tried to respect this process, because we do not think we should legislate on an appropriations bill. But the way this amendment was adopted, and the amendment itself, would not the gentleman concede it is major legislation to set aside five major laws to give this dam an exemption? That is our objection. Not on the merits that the gentleman has powerfully argued, but the question of whether or not on an appropriation bill there ought to be major legislation enacted without warning to the other Members of the House.

Mr. **Bevill**. Mr. Speaker, you could argue that issue on nearly every bill that comes to this floor. If we do not quit talking about jurisdiction, this country is going to be on its knees with respect to energy. This amendment was handled properly. I did not offer it. I accepted it. The gentleman from Tennessee offered the amendment. Three hundred Members were sitting there. Nobody questioned it.

Mr. **McCloskey**. I was sitting in the front row.

Mr. **Bevill**. The gentleman was sitting in the front row. And that was the time to object under our rules. The gentleman knows that.

But let us not stop there. The gentleman knows that we voted 231 to 157 to continue this project last year.

Mr. **Beard** of Tennessee. Mr. Speaker, it befuddles my mind that we continue to talk about technicalities such as legislation on an appropriation bill. I wish the Members of this House would take the time or, if they have not seen it, call for a copy of the GAO report that has been done on the enforcement and the implementation of the Endangered Species Act. If the Members did this they would see that you can throw technicalities to the wind, because the endangered species and the activation of the implementation of this Act has been an absolute and total disaster and insult to the integrity of this body as to the direction this body gave it in starting this bill.

The report shows how, on different projects, they turned their head the other way because a particular Member happened to be on a particular committee that could prove embarrassing if they placed this particular endangered species on the list. So, therefore, the head was turned the other way. It just so happens, apparently, the Member of this particular district did not happen to be on the right committee and, therefore, because of connections here and there, the snail darter was placed on it, with no priority, and this project has been stopped. It fulfilled every environmental responsibility when it was initiated. I ask every Member of this House, the way the Endangered Species Act was originally written, under suspension, with approximately 45 minutes of debate, talking about the coyote and the elephant, or whatever, some of the big items, never some of these other ones talked about, 45 minutes of debate. And I want to tell every Member here that each one of you could have had a project that had fulfilled every environmental requirement in this country, it could be 2 years down the road to the project having been completed, and it could have been stopped the way the bill was written. That is what happened here. It was a terrible piece of legislation the way it was written. Intent was good; the legislation and the interpretation by the Department enforcing it was absolutely an embarrassment, and some heads should roll.

So I say to this body and I plead with this body to look at this and to correct this terrible injustice and vote to exempt the Tellico Dam.

Mr. EDGAR. Mr. Speaker, I would like to suggest that everyone take a look at the letter by Cecil Andrus that is dated July 27, which was read by my colleague, the gentleman from Massachusetts (Mr. Conte).

I happen to support the amendment offered by the gentleman from Louisiana (Mr. Breaux), and I would suggest to the House that this particular dam should be looked at under the regular authorizing process and not put into this legislation at this time.

I would hope that this bill is not vetoed by the President because this amendment is included.

I would like to just say one thing that disturbs me in this debate. We are talking about the Endangered Species Act, and we are talking about its implementation, whether we are for it or against it, and the way it is processed.

I was disturbed by one of the statements of one of the gentlemen from the other side who said that just because this snail darter is small, it somehow is insignificant.

If you look at the human race in comparison to the universe, we are small, and we are insignificant. I think most of us would agree that we have a right to exist on this particular planet. There is a very delicate interface in the world in which we live in terms of environmental species.

I think that, while you may not like the looks, the shape or the size of the snail darter, it has a right to exist.

I draw your attention to Cecil Andrus' letter, where he states specifically that, contrary to claims of the project proponents, the snail darter's transplant into a separate river has not yet been determined to be successful.

Mr. WHITTEN. May I say, we had Mr. Andrus before our Committee on Appropriations. He agreed with us that this act was not supposed to be used to stop projects, that one could meet the requirements of the act if one transferred the endangered species to new areas.

That occurred in the State of Mississippi. They moved the whooping crane so as not to stop a highway. Mr. Andrus' testimony was, if we did what was done here, it was all right. Mr. Andrus proved it by his own action in going along with Highway 10 in the southern part of our State.

Mr. Bevill. I thank the gentleman for his contribution. I urge my colleagues to vote "no" on the preferential motion of the gentleman from Louisiana (Mr. Breaux).

Mr. Speaker, I yield back the balance of my time.

The Speaker pro tempore. The question is on the preferential motion offered by the gentleman from Louisiana (Mr. Breaux).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. Breaux. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The Speaker pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 156, nays 258, not voting 20, as follows:

[Roll No. 425]

YEAS—156

Addabbo
Ambro
Anderson, Ill.
Andrews, N.C.
AuCoin
Barnard
Barnes
Beard, R.I.
Bedell
Beilenson
Biaggi
Bingham
Blanchard
Bonior
Bonker
Brademas
Breaux
Brodhead
Brown, Calif.
Burton, John
Burton, Phillip
Carr
Chisholm
Clay
Cleveland
Conte
D'Amours
Deckard
Dellums
Derrick
Derwinski
Dicks
Dingell
Dodd
Donnelly
Downey
Drinan
Early
Eckhardt
Edgar
Edwards, Calif.
Emery
Erdahl
Evans, Del.
Fazio
Fenwick
Ferraro
Fish
Fisher
Florio
Foley
Ford, Mich.
Fowler
Frost
Fuqua
Gibbons
Gilman
Gingrich
Ginn
Gradison
Green
Guarini
Hall, Ohio
Harkin
Harris
Hawkins
Heckler
Hefner
Hollenbeck
Holtzman
Hughes
Jacobs
Jeffords
Kastenmeier
Kildee
Kindness
Kostmayer
LaFalce
Lee
Lehman
Leland
Levitas
Long, Md.
Lowry
Lundine
McCloskey
McDade
McHugh
Maguire
Markey
Marks
Matsui
Mattox
Mikulski
Mikva
Miller, Calif.
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mottl
Nedzi
Nelson
Nolan
Oberstar
Obey
Ottinger
Patterson
Paul
Pease
Petri
Peyser
Preyer
Pritchard
Pursell
Rangel
Ratchford
Reuss
Richmond
Rinaldo
Rodino
Rosenthal

YEAS—Continued

Russo
Sabo
Sawyer
Scheuer
Schroeder
Seiberling
Sensenbrenner
Shannon
Simon
Skelton
Snowe
Solarz
Spellman
St Germain
Stack
Stewart
Stokes
Studds
Swift
Udall
Van Deerlin
Vanik
Vento
Walgren
Waxman
Weaver
Weiss
Williams, Mont.
Wirth
Wolff
Wolpe
Yates
Zeferetti

NAYS—258

Abdnor
Akaka
Albosta
Alexander
Anderson, Calif.
Andrews, N. Dak
Annunzio
Anthony
Applegate
Archer
Ashbrook
Ashley
Aspin
Atkinson
Badham
Bafalis
Bailey
Baldus
Bauman
Beard, Tenn.
Benjamin
Bennett
Bereuter
Bethune
Bevill
Boggs
Boland
Boner
Bouquard
Bowen
Brinkley
Brooks
Broomfield
Broyhill
Buchanan
Burgener
Burlison
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Chappell
Cheney
Clausen
Clinger
Coelho
Coleman
Collins, Ill.
Collins, Tex.
Conable
Corcoran
Corman
Cotter
Coughlin
Courter
Crane, Daniel
Crane, Philip
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
Davis, S.C.
de la Garza
Devine
Dickinson
Dixon
Dornan
Dougherty
Duncan, Oreg.
Duncan, Tenn.
Edwards, Ala.
Edwards, Okla.
English
Erlenborn
Ertel
Evans, Ind.
Fary
Fascell
Findley
Fithian
Flippo
Ford, Tenn.
Fountain
Frenzel
Gaydos
Gephardt
Giaimo
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gramm
Grassley
Gray
Grisham
Gudger
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harsha
Heftel
Hightower
Hillis
Hinson
Holt
Hopkins
Horton
Howard
Hubbard
Huckaby
Hutto
Hyde
Ichord
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Jones, Tenn.
Kazen
Kelly
Kemp
Kogovsek
Kramer
Lagomarsino
Latta
Leach, Iowa
Leach, La.
Leath, Tex.
Lederer
Lent
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lott
Lujan
Luken
Lungren
McClory
McCormack
McDonald
McEwen

NAYS—Continued

McKay
Madigan
Marriott
Martin
Mathis
Mavroules
Mazzoli
Mica
Michel
Miller, Ohio
Mineta
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nichols
Nowak
O'Brien
Oakar
Panetta
Pashayan
Patten
Perkins
Pickle
Price
Quayle
Quillen
Rahall
Railsback
Regula
Rhodes
Ritter
Roberts
Robinson
Roe
Rose
Rostenkowski
Roth
Rousselot
Roybal
Royer
Rudd
Runnels
Santini
Satterfield
Schulze
Sebelius
Sharp
Shelby
Shumway
Shuster
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solomon
Spence
Staggers
Stangeland
Stanton
Steed
Stenholm
Stockman
Stratton
Stump
Symms
Synar
Tauke
Taylor
Thomas
Thompson
Traxler
Trible
Ullman
Vander Jagt
Walker
Wampler
Watkins
White
Whitehurst
Whitley
Whittaker
Whitten
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wright
Wyatt
Yatron
Young, Alaska
Young, Fla.
Young, Mo.
Zablocki

NOT VOTING—20

Bolling
Brown, Ohio
Conyers
Diggs
Evans, Ga.
Flood
Forsythe
Garcia
Holland
Ireland
McKinney
Marlenee
Murphy, Ill.
Pepper
Stark
Treen
Volkmer
Williams, Ohio
Wydler
Wylie

The Clerk announced the following pairs:

Messrs. Traxler, Atkinson, Abdnor, Mazzoli, and Kogovsek changed their vote from "yea" to "nay."

Messrs. Wirth and Beard of Rhode Island changed their vote from "nay" to "yea."

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

[From the Congressional Record, Sept. 10, 1979]

Senate Consideration and Acceptance of the Conference Report Exclusive of Amendments in Disagreement, Including That Concerning the Tellico Dam and Reservoir

Energy and Water Development Appropriations, 1980—Conference Report

Mr. Johnston. Mr. President, I submit a report of the committee of conference on H.R. 4388 and ask for its immediate consideration.

The **Presiding Officer** (Mr. Bradley). The report will be stated.

The second assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4388) making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The **Presiding Officer**. Without objection, the Senate will proceed to the consideration of the conference report.

Mr. **Johnston**. Mr. President, this is the Energy and Water Resources conference report. The conference report is totally noncontroversial. The bill originally passed the Senate by a vote of 90 to 6 and passed the House of Representatives by a vote of 359 to 29.

I contemplate very shortly making my statement for the Record and asking approval of the conference report.

There are two important amendments in disagreement which will be voted on separately by the Senate. One is the Hart Building, because the House approved the Senate action on the Hart Building after reducing the amount as approved by the Senate. I will plan shortly to ask for concurrence in the House amendment because, as a matter of fact, the House did precisely what I as chairman of the Building Committee had recommended in the first place. I think it was very sound action.

Second, we will have a vote on the Tellico Dam, which is, of course, controversial and will be debated.

But the conference report itself, for which we will shortly ask approval, is totally noncontroversial.

Mr. President, this is the conference report on H.R. 4388, the energy and water development appropriation bill for fiscal year 1980. The House of Representatives agreed to the conference report on August 1, and I hope that the Senate will clear this measure this afternoon in order that the bill can be sent to the President immediately.

Mr. President, inasmuch as the conference report has been available since July 25—both the printed report and in the Congressional Record, I will only give a brief summary of the conference action in settling the differences between the House and the Senate.

As recommended by the committee of conference, the conference agreement provides $10,586,475,700 in new budget (obligational) authority for the fiscal year 1980, including the amount of $57,480,700 for the Hart Senate Office Building. This amount for the Hart Building was changed slightly by action of the House and I will move that the Senate concur in the House amendment.

For the energy and water development appropriation bill items, the agreement would provide a total of $10.798,995,000, an amount which is $30,020,000 less than the bill as passed by the Senate, and $113,065,000 more than the bill as passed by the House. The conference agreement is $195,497,000 less than the President's budget estimates submitted for our consideration. I want to emphasize that this is almost a $200 million reduction from the amounts requested in the President's budget.

The conference agreement provides $6,488,874,000 to the Department of Energy for various research and development programs and other activities. Of this amount, $3,061,828,000 is for energy supply

R. & D. programs; $471,900,000 is for general science and research; and $2,959,396,000 is for atomic energy defense activities.

Mr. President, I would also point out that the conference report includes $620,879,000 for solar energy development and applications; $149,202,000 for geothermal energy, $18,324,000 for small-scale hydroelectric; and $355,405,000 for fusion energy. There is also provided $569,919,000 for the breeder reactors program, although there are no funds in this bill for the Clinch River breeder reactor demonstration project. Funds are also provided for continuing work on other nuclear fission activities including funds for the continuation of the program for the storage of spent nuclear fuel.

Both Senate and House Appropriations Committees have made clear that they expect a vigorous effort by the administration to have one or more away-from-reactor (AFR) storage facilities in being by 1983.

The funds provided by the conference agreement will permit the administration to move forward with this effort. The administration can and should study possible regional AFR sites, hold public hearings in States with existing or proposed AFR sites and negotiate with owners of existing AFR sites to determine the availability of these sites.

In addition, the conference agreement provides $5 million for plant and capital equipment spending for an AFR facility. This will enable the administration to continue developing site suitability data and to allow design work to proceed to a degree sufficient to prepare licensing documents, to prepare and submit the licensing and licensing support documents and to prepare procurement packages for long lead items which are on the critical path such as high density storage racks. These activities are essential if storage requirements predicted for 1983 are to be met.

The conference agreement for title II of the bill—which is the civil works program of the U.S. Army Corps of Engineers—is $2,795,926,000. Of this amount $1,467,566,000 is for the construction, general appropriation; $210,515,000 for the Mississippi River and tributaries flood control program; and $848,500,000 for operation and maintenance. The recommendations for each project and activity are included in the conference report.

Mr. President, for title III, the Bureau of Reclamation the conference agreement contains $607,341,000 for the important water development projects and activities in the 17 Western States.

For title IV, independent agencies, the agreement provides a total of $906,854,000, including an amount of $359,490,000 for the Appalachian regional development programs; $363,340,000 for the Nuclear Regulatory Commission $148,677,000 for the Tennessee Valley Authority and $34,614,000 for the Water Resources Council.

Mr. President, there were a number of typographical and printing errors in the conference report as printed in the Congressional Record and an error in the slip copy of the report. The House managers brought these errors and corrections to the attention of the House as listed on page H7211 of the August 2, 1979 Congressional Record, and I will not repeat enumerating these items now corrected.

Mr. President, the Senate amendment numbered 30 relative to the Tellico Dam-snail darter controversy and Senate amendment numbered 37 regarding the Hart Senate Office Building were reported by the conferees outside of the conference report and will require separate, further action by the Senate in light of the House action. These matters will be pending immediately after action on the conference report.

Mr. President this is a good conference report, and I take this opportunity to express my thanks and appreciation to the Senate conferees, particularly the distinguished Senator from Oregon (Mr. Hatfield) who is the ranking minority member of the subcommittee. I would also like to express our appreciation and warm regards to the able and effective gentleman from Alabama, Mr. Bevill, chairman of the House conferees, and to the House conferees. It is our good fortune and pleasure to work with these fine gentlemen and ladies of the House of Representatives and to be able to settle our differences in an amicable fashion and with a minimum of disagreement.

Mr. HATFIELD. Mr. President, I support the adoption of the conference report on H.R. 4388, making appropriations for energy and water development. The bill provides $10,798,995,000 for these purposes, approximately $195,000,000 below the President's budget for fiscal year 1980. I believe this is a reasonable and prudent amount that will allow us to expedite action on necessary projects without unduly fueling inflation through increased Federal spending.

I am especially pleased with the intiatives the bill takes in renewable forms of energy development and hope that we can continue to make progress in this important area. I should also point out that the bill contains no money for the Clinch River breeder reactor pending resolution of that issue in the authorizing legislation. I certainly hope we will vote to terminate that outmoded project and move away from what I consider to be a dangerous and unnecessary technology.

That concludes my remarks, Mr. President except to again express my appreciation to the subcommittee chairman, Mr. Johnston, and the staff for their work on this bill.

Mr. DOMENICI. Mr. President, at this time I take the opportunity to express my sincere gratitude to the Energy and Water Development Subcommittee for their responsiveness to the many pressing issues facing our Nation and my State of New Mexico. The bill contains funding for several extremely important projects in my State, and I appreciate the committee's attention to these matters. I think that they have done a fine job with this bill.

Mr. JOHNSTON. Mr. President, unless there are any questions or anyone desires further discussion, I move the adoption of the conference report.

Mr. CULVER. Mr. President, reserving the right to object, I address this question to the manager of the bill: I gather that the pending motion is——

Mr. JOHNSTON. The pending motion is to adopt the conference report.

Mr. CULVER. Procedurally, what will come subsequent to that?

Mr. JOHNSTON. Matters in disagreement are outside the conference report, so the Senator from Iowa is not foreclosed on the Tellico Dam issue by the adoption of the conference report.

Mr. CULVER. And the Senator from Louisiana is not foreclosed.

Mr. JOHNSTON. Neither of us is foreclosed. That is correct. It is completely outside the conference report.

Mr. CULVER. I thank the distinguished floor manager.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time on the conference report.

Mr. HATFIELD. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. Tsongas). Without objection, the conference report is agreed to.

[From the Congressional Record, Sept. 10, 1979]

SENATE CONSIDERATION AND ADOPTION OF A MOTION TO RECEDE FROM ITS AMENDMENT NO. 30 (AND ACCEPT THE HOUSE LANGUAGE)

Mr. JOHNSTON. Mr. President, I move that the Senate recede from its amendment numbered 30. This is the Tellico Dam amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> Resolved, That the House insist upon its disagreement to the amendment of the Senate numbered 30 to the aforesaid bill.

Mr. JOHNSTON. Mr. President, I yield 5 minutes to the distinguished Senator from Tennessee.

Mr. SASSER. I thank the distinguished Senator from Louisiana for yielding.

Mr. President, I do not intend to take much of the Senate's time. Most of us know the issues involved here. There has been a great deal of rhetoric—both pro and con. But the basic facts remain.

As a member of the Appropriations Committee, my main concern is that we do not waste the taxpayer's money.

I say to my colleagues that the question before the Senate today is not an environmental question—it is an economic question. I direct the attention of Senators to the factsheet that has been placed on their desks. As can be seen from the picture, Tellico Dam is built—it is an existing structure. The entire project is 95 percent complete. More than $111 million has been appropriated by Congress for this project since 1967.

If this body does not agree to the House amendment, these funds will go down the drain. In addition, it would cost the taxpayers another $23.4 million to tear down the project we have already spent $111 million to build. I do not think the American people want us to do that.

What are the environmental considerations of this project? The Tellico opponents say we must halt the Tellico Dam and tear it down because the snail darter must be saved.

So, what about the snail darter—a fish barely larger than a paper clip with an adult weight of only 5 grams? It has been listed as an endangered species under the Endangered Species Act. Now, I support the Endangered Species Act and have voted for it in the Chamber. A majority of the House and Senate supports the intent of this act—important species must be protected and maintained.

But I say to my colleagues that we are not faced with a decision whether or not to save the snail darter. The Tellico Dam is built on the Little Tennessee River in my State. The snail darter is already dying out in that river. Officially the Tennessee Valley Authority has stated that there are only 100 snail darters left in the Little T. But I am told by local officials that the last time the TVA sent divers down to count the snail darter population they could not find any—so the snail darter may already be extinct in the Little Tennessee River. So the logic of saying that the Little T is critical to the survival of the snail darter escapes me.

To those who are concerned with saving the snail darter, I want to ease your mind right here and now—the snail darter is being saved. It is alive and well. Four years ago 700 snail darters were transplanted to the Hiwassee River. Today the snail darter is thriving in the Hiwassee. The 700 which were transplanted have reproduced and now number at least 2,500 and possibly as many as 3,000. So it is clear that a new habitat for the snail darter has been established in the Hiwassee River. The Little T, where the Tellico is built, apparently is no longer suitable for the snail darter.

In addition there have been reports that the snail darter is living in other bodies of water. The mayor of Sparta, Tenn., has reported that the snail darter lives in the Calfkiller River near his town. A Kentucky biology teacher has said that the snail darter is living in a river in his State.

Mr. President, the Endangered Species Committee, which was created by Congress to review conflicts arising from projects and endangered species, failed to exempt Tellico from the Endangered Species Act. Now I would think that the Endangered Species Committee reviewed this controversy very carefully and with great deliberation, just as the Congress has carefully considered this project and approved it for the past 12 years. But I am sorry to report to the Senate that the Endangered Species Committee failed to take an objective look at the situation. The Endangered Species Committee reviewed the matter only 15 minutes before making its decision. Furthermore, that committee condemned the Tellico project without even visiting the site. In fact, I am advised that no member of that Committee has visited the Little Tennessee River as it exists today.

The Endangered Species Committee made its decision based not on environmental issues but economic issues. Actually the committee made its decision not on the basis of sound economics, but rather by some creative accounting. The Endangered Species Committee would lead us to believe that the Tellico Dam project does not have a favorable benefit-to-cost ratio. The fact is the benefit-to-cost ratio has been calculated to be well above unity at 2.3 or 2.6 to 1. It is my understanding that there are several dozen other projects in this bill before us which have benefit-to-cost ratios much less than the Tellico benefit-to-cost ratio. So, Tellico Dam is an economic project. But the Endangered Species Committee would lead us to believe otherwise.

The Endangered Species Committee also said that if the Tellico Dam were to meet Bureau of Reclamation standards, another $14.5 million would have to be spent on the spillway. But Tellico is a substantially completed Tennessee Valley Authority dam, not a Bureau of Reclamation dam. And Tellico meets the spillway standards set by the TVA. In addition, I would pose the question: Why does not the Bureau of Reclamation go back and redesign its own dams that are already built and substantially complete? The Endangered Species Committee is saying to the TVA that it should comply with the guidelines of another agency. But that other agency is not going to the extreme suggested for Tellico. But the Endangered Species Committee does not tell us that.

Now, there are those who will say that since the Endangered Species Committee has made its decision, we should abide by it; that the Congress should let its own creation work its will. But I say to those who hold this opinion, that when Congress approved the Endangered Species Committee, this body did not abdicate its legislative responsibilities. It is clear the Endangered Species Committee did not make a thorough and objective review of this matter, therefore Congress must act.

Mr. President, I would like to mention one other benefit from the Tellico project before yielding the floor. This project will lead to the generation of electricity for 20,000 homes. I think all of us agree that this Nation is energy short. We should not turn our backs on any readily available energy source. Stop this project and destroy Tellico Dam and you are shutting off electricity to a town the size of Reston, Va.

Mr. President, the amendment of the House is a logical, sensible approach to ending this ridiculous impasse. The Supreme Court in its opinion invited the Congress to have the final say. Let us agree with the House and put this issue behind us so this body can get on with more important legislation.

Mr. President, the Tellico Dam is a reality. It exists. It has the almost unanimous support of the people of the area, as has been pointed out by the distinguished chairman of the subcommittee, Senator Johnston. We have already spent $111 million on this project already; it would cost another $24 million to tear it down. Provision has been made for the snail darter—it is thriving in another habitat.

I think the mood of the American people is clear—do not waste our money. Approval of the House position is a logical, economic conclusion to the current problem. To destroy this dam—to fail to utilize this needed public facility—would be utter waste.

That is the issue before the Senate today.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I wish to ask the Senator from Tennessee one question. He said $100 million has been spent on this dam. I think it is not so, that $22 million has been spent on the construction of the dam, and the balance of the funds is for the purchase of the acreage that is going to be flooded. In other words, we are not looking at a $100 million dam.

Mr. SASSER. I say to the Senator from Rhode Island that $22.5 million has been used for the construction of the dam. But this figure does not include the additional cost of the canal built to connect Tellico with the Fort Loudoun Reservoir or the cost of numerous other improvements that were built to serve the perimeter of the proposed lake, the waters of which were to be impounded by the Tellico Dam itself.

Mr. CHAFEE. I thank the Senator very much.

Mr. **Sasser**. I just might say that 348 families have moved and the land entirely cleared for this project. All buildings, fences, and trees, have been removed or dismantled; roads have been abandoned; bridges have been removed, et cetera.

The **Presiding Officer**. The Senator from Tennessee is recognized.

Mr. **Baker**. Mr. President, I thank the Chair and thank my colleague from Louisiana.

Mr. President, I hope this is the last time around. I hope that we can resolve this issue once and for all, and I hope, finally, reason will prevail.

I trust that at this time the Senate will concur in the position taken so overwhelmingly by the House of Representatives and let us get on with the business of utilizing a dam that is 99 percent complete—it will supply electricity for heating 20,000 homes—and proceed to completion with the project that was authorized before I ever came to the Senate.

Mr. President, the remarks that I made on this subject so often in the past do not bear repetition here, and I will not burden the Senate except to say that if we have any serious intent to solve the energy shortage in this country, to make a reasonable and decent balancing judgment on the requirement of the Environmental Policy Act, on the one hand, and social necessity on the other, this in my judgment is a perfect example of it.

Mr. President, the awful beast is back. The Tennessee snail darter, the bane of my existence, the nemesis of my golden years, the bold perverter of the Endangered Species Act is back.

He is still insisting that the Tellico Dam on the Little Tennessee River—a dam that is now 99 percent complete—be destroyed.

In the midst of a national energy crisis, the snail darter demands that we scuttle a project that would produce 200 million kilowatt hours of hydroelectric power and save an estimated 15 million gallons of oil.

Although other residences have been found in which he can thrive quite serenely, the snail darter stubbornly insists on keeping this particular stretch of the Little Tennessee River as his principal domicile.

In 1975 and 1976, more than 700 snail darter pioneers journeyed from the Little Tennessee to the Hiwassee River, also in Tennessee, and the latest snail darter census, taken in 1978, showed 2,500 of these wonderful fish going about their business in the Hiwassee River. A new snail darter subdivision is taking hold in the Holston River, as well.

Let me stress again, Mr. President, that this is fine with me. I have nothing personal against the snail darter. He seems to be quite a nice little fish, as fish go.

But it occurs to me that he should not have the ultimate veto power over his choice of residences, especially when a major energy-producing dam lies all but 1 percent complete on the snail darter's original front porch.

Frankly, Mr. President, I am beginning to question his motives. This 2-inch terror kept the lowest profile of all God's creatures for thousands of years until a relatively short time ago, but now he seems to enjoy the publicity.

Perhaps if we gave him a cover story in Time or Newsweek, or got him a feature on the CBS evening news or an interview with Barbara

Walters, his lust for fame might be fulfilled and he would leave us alone.

Now seriously, Mr. President, the snail darter has become an unfortunate symbol of environmental extremism, and this kind of extremism, if rewarded and allowed to persist, will spell doom to the environmental protection movement in this country more surely and more quickly than anything else.

I am seriously concerned that if present trends continue, the Endangered Species Act will be perverted from its original intent as the means of protection of endangered species and be used instead as a convenient device to challenge any and all Federal projects.

If the snail darter can be found in the Little Tennessee River, there is a snail darter or some equally obscure creature in every river and under every rock in America. Opponents of public works projects will have a virtually limitless arsenal of weapons with which to do battle.

We who voted for the Endangered Species Act with the honest intention of protecting such glories of nature as the wolf, the eagle, and other treasures have found that extremists with wholly different motives are using this noble act for meanly obstructive ends.

That is precisely what has happened in the case of the Snail Darter against Tellico Dam, and if this perversion of the law is allowed to continue, the law itself will soon stand in jeopardy—and that will be the ultimate environmental tragedy.

We must not let that happen, Mr. President. The House has given us another opportunity to set things right, and at long last we should take it. I implore my colleagues to seize this opportunity to redeem our commitment to energy production while not forsaking our commitment to environmental protection, to turn away from extremism toward reason, to save both the darter and the dam.

I urge the adoption of the conference report as written.

Mr. Stennis. Mr. President, will the Senator yield to me just for a brief observation?

Mr. Baker. I yield.

Mr. Stennis. My mind goes back to the points the Senator made, the history of this matter, the development of it, the authorization and appropriations, and the building. I heartily agree with his point about energy.

We are right on the brink—I do not mean a brink of disaster—but we are on a brink of having to make preparations for the future, the future of others who are younger than we are.

It is a small amount involved here of further investment. It just makes me feel good to think that such a small amount will finish this project and put it in operation and create energy.

I commend the Senator for his position. I do not think it is prompted by the proximity of it to his State. There are people involved and energy involved. There is very little additional money involved.

I hope we take the stand the House of Representatives did.

Mr. Baker. Mr. President, I thank my friend from Mississippi and I thoroughly concur and agree.

The Presiding Officer. Who yields time?

Mr. Culver. Mr. President, a parliamentary inquiry.

The Presiding Officer. The Senator will state it.

Mr. **Culver.** I will just be interested in hearing from the sponsor of the motion to recede and accept the House position as to why he is sponsoring that amendment. I think under those circumstances one who may find himself in opposition to it could address the argument that has been advanced.

Mr. **Johnston.** Very well, Mr. President. How much time is remaining?

The **Presiding Officer.** Seventeen minutes and fifteen seconds.

Mr. **Johnston.** Mr. President, this matter has indeed been debated a great deal. There may be no open minds on the question. That is regrettable because I think it is a rather clear question.

Let me just cover two points that have not been covered before.

First of all, if you want an energy and water resources bill, in my judgment, we are going to have to drop the snail darter. We are going to have to build the Tellico Dam.

Why is that? Because the Senate was closely divided 53 to 45 on the question last time. The House brought it up and reconsidered and by a vote of 156 ayes and 258 nays voted against the Senate amendment and then voted to insist on their language. They made it perfectly clear that no Tellico—no bill.

I commend that to my colleagues to think about.

I do not give it to you as a threat. I pass it along to you as what I think are the facts in the matter.

We know the dam is 98 percent complete with $110 million spent. We know that the snail darter and in fact the endangered species law is irrelevant to this whole matter. I think the most telling argument in the minds of some people has been the fact that in their view it costs more to complete the dam than the benefits are. That has come up over and over again in the argument.

Mr. President, that argument is patently unsound and untrue. TVA and the Department of the Interior task force did a study on it, Mr. President, and came up with a benefits to remaining costs ratio of somewhere between 2.3 to 1 and 2.6 to 1.

Where did these figures, then, come from that the Secretary of the Interior has been talking about? Well, I will tell you where those figures came from, and how they got them. Not satisfied with the TVA and the Department of the Interior figures, the staff of this committee created under this law did their own investigation, using novel, untried, brand new methods, and having done that, they said it would cost more to complete than the benefits.

What were their methods? First of all, they took an interest rate of 10 percent—for opportunity—costs of land for an annual cost estimate which is not sanctioned in law, not used anywhere else in the law, and said, "We are just going to use 10 percent."

Second, they took another novel approach. They said, "We are going to consider the land that has been purchased at its highest opportunity cost."

What does that mean? The cost they figure they can sell it at. Can you imagine, having expropriated this land from farmers and other landowners to build the dam, turning around and selling the land for some other use to some other farmers, and the Federal Government pocketing the profits? It is patently absurd to think about doing that, unfair, and probably unconstitutional, because property can be expropriated only for public use under the Constitution.

Nevertheless, they did that. But the key thing is the value they put on the property. First of all, they took the highest sales in Blount and Loudon Counties, the highest sales, and figured that in at an average cost of over $1,000 an acre for some of this land which is so rocky, hilly, and unusable that you cannot even farm on it. And having done that, they took land, the comparable sales, according to them, in Blount and Loudon Counties, when most of the land is in Monroe County.

Mr. President, there are 38,000 acres involved here, and only a portion of that was even used for farming. Of that which was used for farming, much of the topsoil has been scraped off to use for fill for roads, the damsite, and bridges surrounding it. All the roads have been taken out. If you were going to go back to farming use, you would have to spend an estimated $37 million to put back in the 60 miles of roads, not to mention the bridges or the cost of topsoil, or utilities.

So, Mr. President, to say it costs more to complete this thing than you get in benefits is patently absurd. They added other items. The fact of the matter is that electricity for 20,000 homes can be produced from the reservoir waters, really just by closing the dam.

Let me say one final thing here, Mr. President. We keep hearing all this talk about solar energy being able to provide 20 percent of the Nation's energy resources. A very important part of that 20 percent is hydroelectric, which is defined as solar energy, and that thrust of solar energy and hydroelectric is unanimously supported by the environmental community.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JOHNSTON. One more minute.

The problem is, Mr. President, when we get from the general to the specific and start talking about specific projects, we are always opposed. We are opposed on this one, even though $110 million is invested and it is 98 percent completed. We are opposed on the Dickey-Lincoln Dam, and I will bet you if we try to build any dams in Washington and Oregon, where we have sites, we will be opposed there too.

Mr. President, we have to start somewhere. If we cannot start with this one, 98 percent complete, capable of producing additional electricity for 20,000 homes, we cannot start anywhere. The snail darter is irrelevant. If we cannot start with this one, we might as well quit, Mr. President. Every time we have some problem—this kind of problem with synfuels, that kind of problem with oil and gas development, another kind of problem with coal. This is the cleanest and cheapest kind of energy we can get. I urge the Senate to get about it, and let us produce the energy.

Mr. CULVER. Mr. President, I rise in opposition to the motion to recede and accept the House position.

The Senate has expressed itself on several occasions, twice within the last few months, on this issue, and I think very creditably has upheld the integrity of the Endangered Species Act, as well as the report and recommendations of the Endangered Species Committee, which was the child of the Culver-Baker amendment to the Endangered Species Act last year, and which recommended unanimously that this dam not be completed, and that it is not in the public interest that it be completed.

The distinguished floor manager has said that if we do not go ahead and accept the House position on this issue, and say "You get a green light to a project that has not demonstrated its economic viability or justification on a cost-benefit ratio," and that has suitable alternatives which are in the public interest, that somehow, because the House conferees threaten us—threaten us that we will have no bill—that suddenly we are to repudiate the conscientious effort of the Senate for the past year, and accept that kind of logic.

What we are talking about here, make no mistake about it, is not only the waiver of the Endangered Species Act, not only opening up the floodgates for countless subsequent representations of a similar nature to the Senate, where we are going to have to sit in judgment and make these highly complex decisions regarding endangered species, but also waiving all laws—all laws and all Federal statutes entered into that impact on this project.

What is the justification? Because the House of Representatives might not give us a bill if we do the right thing and reject that kind of ultimatum and threat. Well, I have respect for the integrity and the persuasiveness of the conferees on the Senate side and believe they will represent with fidelity the position expressed on innumerable occasions by the Senate as a body, and uphold the appropriate and just solution of this problem.

Mr. President, as I have stated so often in the past, as a matter of fact twice in just the last 3 months, the Tellico Dam in Tennessee should not be exempted from the Endangered Species Act. For any of my colleagues who, after voting twice on this matter, remain in a quandry as to how to cast their votes today yet a third time, let me once again outline the pertinent facts of the issues.

The Tellico Dam project is not economically viable. To date, the Tellico has cost $103.2 million but only $22.5 million of that is in actual dam construction. The remainder is in roads, land and many other recoverable costs which could be beneficially used in an alternative river development program outlined by TVA.

The Endangered Species Committee, which was created by last year's Culver-Baker amendment to provide flexibility to the Endangered Species Act, analyzed the benefits of completing the Tellico Dam. The representative from the State of Tennessee joined the rest of his Endangered Species Committee members in unanimously concluding that the Tellico project would cost an additional $35 million to complete and would then annually cost $720,000 more than it would provide in benefits.

The distinguished economist, Charles Schultze, the Chairman of the President's Council of Economic Advisers and also a member of the Endangered Species Committee, stated:

> Here is a project that is 95 percent complete, and if one takes just the cost of finishing it against the total project benefits, it doesn't pay, which says something about the original project design.

Mr. President, it is very interesting to note the points raised in a letter from OMB written on September 10, 1979, to me. I ask unanimous consent that its entire contents be printed in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., September 10, 1979.

Hon. JOHN C. CULVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CULVER: I want to take this opportunity to emphasize the strong objections of the Administration to the Tellico project, which I understand will be coming up for floor consideration in connection with action on the conference report on H.R. 4388, the Energy and Water Development Appropriations Bill.

The Tellico Dam was rejected by a special seven-member Endangered Species Committee, chaired by Secretary Andrus, which was created by the Congress specifically to resolve conflicts arising under the Endangered Species Act. While the Dam was originally halted for environmental reasons, the Committee unanimously found that the project clearly lacked economic justification. Annual benefits of $6.52 million are well outweighed by annual costs of $7.25 million. In short, the project does not meet the test of economic merit applied to water projects elsewhere in the Nation, and I can see no reason for departing from that standard in this case.

In a period of fiscal stringency, I believe it is critical that only those projects which were clearly justified receive scarce Federal funds; and I am, therefore, hopeful that when the Senate acts on H.R. 4388, it will delete language in the bill which would direct completion of construction of the Tellico project.

Sincerely,

JOHN P. WHITE,
Deputy Director.

Mr. CULVER. John White, Deputy Director of OMB, wrote in part that while the dam was originally halted for environmental reasons, the seven member Endangered Species Committee unanimously found that the project clearly lacked economic justification.

Mr. President, I repeat, that committee, that seven member committee, in its unanimous vote said the Tellico lacked economic justification.

Says Mr. John White:

> Annual benefits, of $6.52 million are well outweighed by annual costs of $7.25 million.

According to Mr. White, the project does not meet the test of economic merit "applied to water projects elsewhere in the Nation, and I can see no reason for departing from that standard in this case."

Mr. President, it baffles me that those who are coming forward in the most vigorous support of the position of the distinguished floor manager of this bill are the very ones talking about the need for a balanced budget, who are talking about the need to eliminate waste and inefficiency in our Federal expenditures in our fight against inflation.

Mr. White goes on to say:

> In a period of fiscal stringency, I believe it is critical that only those projects which are clearly justified receive scarce Federal funds.

He continues that OMB hopes the Senate will sustain its earlier position.

The distinguished Senator from Rhode Island asked a question of the Senator from Tennessee about the amount of money that has been spent on the Tellico. Let us get it straight.

To date, the Tellico has cost $103.2 million, but only $22.5 million, as has been pointed out by the Senator from Tennessee, has been spent on the dam itself. All the remainder of Federal expenditures is in roads, in land condemnation, and many other recoverable benefits and costs which could be beneficially used in an alternative river development program outlined by TVA.

In addition, Mr. President, this project would remove from production approximately 14,000 acres of prime agricultural land. We are losing in America today 1 million acres annually to nonfarm uses. We are losing in America today 3 to 4 billion acres in soil erosion alone every year. Completing the Tellico will only add to and accelerate these trends and developments. I recently received a letter from the Department of Agriculture expressing their concern for the destruction of prime farmland that would be caused by the Tellico. I ask unanimous consent that the letter be printed in the Record at this point.

The letter follows:

Department of Agriculture,
Office of the Secretary,
Washington, D.C., September 6, 1979.

Hon. John C. Culver,
U.S. Senate,
Washington, D.C.

Dear Senator Culver: Your concern for the preservation of prime farmland is recognized and appreciated. For that reason, we felt that the following information concerning the proposed Tellico Dam Project in Tennessee would be of interest.

Thirty-eight per cent, or 13,935 acres of the total project area has been designated as either Prime Farmland (USDA definition) or Lands of Statewide Importance (defined by USDA and Tennessee State Government). In the reservoir area, 6,721 or 46 per cent of the total 14,159 acres were designated as Prime Farmland or Lands of Statewide Importance.

The loss of more than two square miles of the most productive farmland of a local region is always of concern. However, in Eastern Tennessee the occurrence of such a large block of the best farmland is rare, and its possible loss is of serious concern. The loss of the large block of land formerly used to grow corn, grain sorghum and alfalfa has a severe impact on the local farming economy.

The local area has suffered not only the lost tax revenue from the 36,159 acres of land purchased for the project, but the loss of the land's contribution to the important farm industry of the area as well. We suggest, then, any further evaluations of the economic viability of continuing with the inundation of these important farmlands include a complete identification of the direct and indirect impacts on the agricultural economy.

If the Tellico Dam Project is to proceed as originally planned, the new residential, industrial, and vocational uses of the project lands would be substantial. The additional land use changes brought about outside of the project area might add an important increment to the already large direct and indirect impacts. We are concerned about this fact, and enclose a fact sheet on the land quality of the project area for your use.

Thank you for your keen interest in this country's farmland.

Sincerely,

Jim Williams,
Acting Secretary.

TELLICO PROJECT, LAND QUALITY

	Acres	Percent o tota
1. Normal pool elevation: 813 ft above mean sea level		
2. 38,000 acres in total project, 36,159 acres of land in project		
3. Land quality, total project:		
Prime farmland	8, 447	23
Lands of statewide importance	5, 488	15
Undesignated	22, 224	62
Total	36, 159	100
4. Land quality, reservoir area (813 ft):		46
Prime farmland	6, 500	9
Lands of statewide importance	1, 221	9
Undesignated	6, 438	45
Total	14, 159	100
5. Land quality, area outside reservoir (813 ft):		
Prime farmland	1, 947	9
Lands of statewide importance	4, 267	19
Undesignated	15, 786	72
Total	22, 000	100

Mr. JOHNSTON. Mr. President, obviously, this is an Alice in Wonderland argument. It does not cost $35 million to complete the dam. It will cost about $2.3 million to finish up minor work and close the gates. Who says $35 million? This Endangered Species Committee whose recommendations are patently—I will not say, Mr. President, fraudulent, but patently wrong.

Mr. President, how do you suppose they are going to get this land back into farm use that they keep talking about? Are they going to give it back to the farmers, or sell it to them? Oh, no. What they have in mind is to make some kind of wild and scenic free-flowing river park. This is not even a free-flowing, wild river; it is backwater or tailwater, with dams upstream and a reservoir below.

Mr. President, this is so clear: With about $1.8 million to $3 million the dam is complete as originally designed. They have to do some minor work—just a very small part—to close this dam. And it will give additional hydroelectric power for 20,000 people, hydroelectric power, flood control, navigation and recreation benefits. And it is then complete.

How this Senate, this Congress, can come in with a project that is essentially complete and, for some asinine reason like the Endangered Species Act, which does not even preserve the endangered species—that is irrelevant here. It has already been transplanted. How we can do that, Mr. President. I do not know. I hope we shall act in good sense and approve the Tellico Dam.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. CULVER. Mr. President, I shall take 3 minutes of my time.

You know, Mr. President, it is an old trick, of course, in a legislative body that if you have a convenient train passing a window that has some trendy appeal to it as a political issue, grab onto it. If energy is the name of the game, we shall trot that out as a justification to do anything in the name of progress. Let us just look at how fallacious that whole argument is.

The fact of the matter is that the Tellico dam would provide only negligible power at best. The amount of energy the Tellico produces is insignificant. It is less than 23 megawatts, Mr. President. This represents less than one one-thousandth of TVA's total capacity at this time, which is in excess of 27,000 megawatts. TVA's planned capacity for 1985 is in excess of 40,000 megawatts. TVA does not need the additional energy from the Tellico dam project.

Demand within the system is rising currently at less than 4 percent a year, instead of the previous rate, Mr. President, of 6 to 7 percent a year. A 1978 GAO report projects that at the current rate of expansion, there could be an excess power capability, in the TVA system, ranging from 6,700 to 24,800 megawatts in the year 2000. Because of this, TVA today is in fact deferring four power units that are nuclear that would produce an additional 5,200 megawatts.

The proponents of the project speak of energy as if it were free. It is not. To get the 23 megawatts that are being spoken of, we have to spend an additional $35 million. What they are really advocating is, to get these additional 23 megawatts that we do not need, we have to spend an additional $35 million to flood $40 million worth of prime farmland and spend $720,000 after that annually, over and above the project benefits.

The snail darter is endangered. There are two populations of snail darters today that we know of in this area, one in the Little Tennessee and one in the Hiawassee River. The Little Tennessee population would be destroyed if the gates of this dam were closed.

In a survey this year, the Fish and Wildlife Service found the number of young snail darters down in the Hiawassee River. The Fish and Wildlife Service considers the snail darter an endangered species. More importantly, there are no pending petitions from any Members of the Senate or any other group or party to reconsider this position.

Finally, Mr. President, in addition to ordering the completion of a dam which is environmentally and, most importantly today, economically unsound, the exemption would violate the jurisdictional prerogatives of the Environment and Public Works Committee, which, after all, is the committee of legislative jurisdiction here, which has carefully considered this issue, and which has rejected a Tellico exemption by a vote of 10 to 3. This is legislating on an appropriations bill and should not even be germane.

By approving the Tellico exemption, the Senate would also undermine an equitable solution it adopted just last year, a Cabinet-level review committee to resolve conflicts between endangered species and other legislation that it needs.

Mr. President, I again urge my colleagues to reject an exemption for the Tellico.

I just point out, an exemption for Tellico will put the Senate squarely in the business every week in the months ahead having several of these kinds of exemptions we can play with over and over again.

Mr. Chafee. Mr. President, I merely note that this is extraordinary language. It provides that notwithstanding the provisions of 16 U.S.C., or any other law, TVA is authorized to proceed with this.

It means they are exempt from all other laws—workmen's compensation, clean water, historic preservation, Davis-Bacon—any other law that exists in the books, they are exempt from under the extraordinary language we are considering here.

The Presiding Officer. All time has expired. The question now is on agreeing to the motion that the Senate recede from its amendment No. 30. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Cranston. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Arkansas (Mr. Bumpers), the Senator from Hawaii (Mr. Inouye), the Senator from Maine (Mr. Muskie), and the Senator from Rhode Island (Mr. Pell) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pell) would vote "nay."

Mr. Stevens. I announce that the Senator from Colorado (Mr. Armstrong), the Senator from Minnesota (Mr. Durenberger), and the Senator from South Dakota (Mr. Pressler) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Durenberger) would vote "nay."

The Presiding Officer (Mr. Baucus). Are there any Senators in the Chamber wishing to vote who have not done so?

The result was announced—yeas 48, nays 44, as follows.

[Rollcall Vote No. 269 Leg.]

YEAS—48

Baker
Bellmon
Boren
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cannon
Cochran
Danforth
Dole
Domenici
Ford
Garn
Glenn
Goldwater
Gravel
Hatch
Hayakawa
Heflin
Helms
Huddleston
Humphrey
Jackson
Javits
Jepsen
Johnston
Kassebaum
Laxalt
Long
Lugar
Mathias
McClure
Morgan
Pryor
Ribicoff
Sasser
Schmitt
Schweiker
Simpson
Stennis
Stevens
Stewart
Talmadge
Thurmond
Tower
Wallop
Warner
Young

NAYS—44

Baucus
Bentsen
Biden
Boschwitz
Bradley
Chafee
Chiles
Church
Cohen
Cranston
Culver
DeConcini
Durkin
Eagleton
Exon
Hart
Hatfield
Heinz
Hollings
Kennedy
Leahy
Levin
Magnuson
Matsunaga
McGovern
Melcher
Metzenbaum
Moynihan
Nelson
Nunn
Packwood
Percy
Proxmire
Randolph
Riegle
Roth
Sarbanes
Stafford
Stevenson
Stone
Tsongas
Weicker
Williams
Zorinsky

NOT VOTING—8

Armstrong
Bayh
Bumpers
Durenberger
Inouye
Muskie
Pell
Pressler

So the motion to recede from Senate amendment No. 30 was agreed to.

Mr. Baker. Mr. President I move to reconsider the vote by which the motion was agreed to.

Mr. Johnston. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

[From the Congressional Record, Sept. 13, 1979]

H.R. 4388 Presented to the President

Message from the House

ENROLLED BILLS SIGNED

At 10:27 a.m., a message from the House of Representative delivered by Mr. Berry, one of its reading clerks announced that the Speaker has signed the following enrolled bills:

* * * * * * *

H.R. 4388. An act making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

* * * * * * *

H.R. 4388 SIGNED INTO LAW, SEPTEMBER 25, 1979 (PUBLIC LAW 96-69)

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1980

STATEMENT ON SIGNING H.R. 4388 INTO LAW. SEPTEMBER 25, 1979

It is with mixed reactions that I sign H.R. 4388, the Energy and Water Development Appropriations bill.

With one major exception, this is a sound and responsible bill. It recognizes the need to hold down spending. It does not commit to unacceptable future expenditures. It provides for sound water projects and for energy development. It represents a commendable step by the Congress in the direction I have been urging through my water resources development and energy policies. It does not fund water projects which, at my request, were terminated in past appropriation bills, and it generally reflects restraints in water project funding.

On the other hand, this bill mandates the completion of the Tellico project on the Little Tennessee River. This project has been halted because of conflicts with the Endangered Species Act. A decision was made through a deliberative process to deal with these conflicts. A special Cabinet-level committee, authorized by the Congress, unanimously concluded that the project should not be completed, on economic grounds.

This action by the Congress overturns that decision and directs the flooding of the Little Tennessee River Valley. I am satisfied, however, that the Congress clearly confronted this issue and settled on its action with clear majority votes in both Houses. I accept, with regret, this action as expressing the will of the Congress in the Tellico matter. I am also convinced that even if I vetoed this bill, Tellico exemptions would be proposed repeatedly in the future.

Nevertheless, I believe firmly in the principles of the Endangered Species Act and will enforce it vigorously. I do not consider that the action by Congress on the Tellico matter implies congressional intent to overturn the general decision process for resolving conflicts under that act. I am convinced that this resolution of the Tellico matter will help assure the passage of the Endangered Species Act reauthorization without weakening amendments or further exemptions.

I also expect the Congress to move vigorously to solidify progress in water resources policy. Prompt action is needed to authorize and appropriate funds for the Water Resources Council water project review function, so that proper technical analysis can insure executive branch recommendations for sound water projects. I believe firmly that my decision on the bill I am now signing will further progress on obtaining a strong Water Resources Council.

As President, I must balance many competing interests. With many important national issues before the Congress—including energy, SALT, the department of education, the Panama Canal implementing legislation, the Endangered Species Act, and water resources policy—

I believe that avoiding a divisive veto battle will help focus congressional efforts on priority concerns.

NOTE: As enacted, H.R. 4388 is Public Law 96-69, approved September 25, 1979.

ENDANGERED SPECIES ACT OF 1973, APPROPRIATION AUTHORIZATION, PUBLIC LAW 96-159

BACKGROUND

Authorization for administration of the Endangered Species Act had been extended only 18 months by the 1978 Amendments and was scheduled to expire in the middle of fiscal year 1980. Bills to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes (H.R. 2218/S. 1143) passed the Senate on June 13, 1979, and passed the House on Oct. 24, 1979. Proposals to exempt the Tellico Dam project from the protections of the Act had been defeated in Senate Committee and again on the Senate floor. The House and Senate went to conference over differences in the two versions of the bill as respectively adopted. Conferees reached agreement on Dec. 4, 1979, and House and Senate agreed to the conference report (H. Rept. 96-697) on Dec. 19, 1979. The bill as enacted was signed into law on Dec. 28, 1979, as Public Law 96-159.

The new statute authorizes appropriations to fund the Act through fiscal year 1982. In addition to provisions for funding endangered species work of the Departments of Commerce and the Interior, the Act authorized appropriations to support Endangered Species Committee and review board functions (under section 7) for fiscal years 1980-82. For the first time, appropriations were also authorized for the Department of Agriculture to facilitate enforcement of both the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with regard to the importation and exportation of terrestrial plants.

The 1979 Amendments designate the Interior Secretary as the Endangered Species Scientific Authority (ESSA) under CITES. Formerly ESSA was a 7-member independent panel with regulatory authority, but not accountable to any public official. The 7-member panel, stripped of regulatory authority, remains as the International Convention Advisory Commission (ICAC). The Secretary now has the enforcement authority ESSA formerly had, but if the Secretary rejects ICAC recommendations, reasons must be published in the Federal Register.

Finally, a number of revisions in the Endangered Species Act were also made by the 1979 Amendments with respect to public meetings and notice requirements, status reviews, critical habitat notifications, consultation requirements of Federal agencies, and other administrative matters. The jeopardy standard under section 7 of the Endangered Species Act was changed from "would jeopardize" to "is likely to jeopardize." The details for the sale of scrinshaw was extended under the amendments for three more years in cases where whale parts and products were held in stock prior to 1973.

CHRONOLOGY—PUBLIC LAW 96-159

February 15, 1979—H.R. 2218 introduced in the House, referred to Committee on Merchant Marine and Fisheries.

February 21, 1979—H.R. 2218 referred to Subcommittee on Fisheries and Wildlife Conservation and the Environment.

April 6, 1979—Hearings. (Printed. Serial No. 96-12).

April 27, 1979—H.R. 2218 considered in open markup session and ordered reported to Full Committee, with an amendment.

May 3, 1979—Considered by Full Committee in open markup and ordered reported to House, with an amendment.

May 15, 1979—H.R. 2218 reported to House, with an amendment. (H. Rept. 96-167).

May 15, 1979—S. 1143, an original bill, reported to the Senate (S. Rept. 96-151) by the Committee on Environment and Public Works.

June 13, 1979—Consideration and passage of S. 1143, with an amendment, by the Senate.

October 19, 1979—House agreed to H. Res. 417, providing for consideration of H.R. 2218, by vote of 320 to 9.

October 22, 1979—General debate by the House on H.R. 2218.

October 24, 1979—House considered and passed H.R. 2218, with amendments, subsequently vacating passage and passing S. 1143 in lieu after amending that bill to contain the language of the House bill as passed and amending the title of the Senate bill.

November 7, 1979—Senate disagreed to House amendments to S. 1143 and requested a conference.

November 14, 1979—House insisted on its amendments and agreed to a Conference.

December 11, 1979—Conference Report 96-697 filed in the House.

December 19, 1979—House agreed to Conference Report, clearing the measure for the Senate.

December 19, 1979—Senate agreed to Conference Report, clearing the enactment for the President.

December 28, 1979—S. 1143 approved by the President, Public Law 96-159.

Public Law 96-159
96th Congress

An Act

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes.

Dec. 28, 1979
[S. 1143]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(a)(5) of the Endangered Species Act of 1973 (16 U.S.C. 1531(a)(5)) is amended by striking out "fish and wildlife." and inserting in lieu thereof "fish, wildlife, and plants.".

Endangered Species Act of 1973, appropriation authorization.

SEC. 2. Section 3(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532(11)) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a)(2).".

SEC. 3. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (b)(1) by striking out "him" and inserting in lieu thereof the following: "him after conducting a review of the status of the species";

(2) by amending subsection (f)(2)(B)(i) to read as follows:

Publication in Federal Register.

"(i) not less than 60 days before the effective date of the regulation, shall publish—

"(I) a general notice and the complete text of the proposed regulation in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text, and a map of the proposed critical habitat) in a newspaper of general circulation within or adjacent to such habitat;";

(3) by amending subsection (f)(2)(B)(iv)(II) by striking out "if requested," and inserting in lieu thereof "if requested within 15 days after the date on which the public meeting is conducted,";

(4) by amending that part of subsection (f)(2)(C) which precedes clause (i) by inserting ", subsection (b)(4) of this section," immediately after "Neither subparagraph (A) or (B) of this paragraph";

(5) by amending subsection (f)(2)(C)(ii)—

(A) by striking out "fish or wildlife," and inserting in lieu thereof "fish or wildlife or plants,",

(B) by striking out "fish and wildlife," and inserting in lieu thereof "fish, wildlife, and plants,",

(C) by striking out "120-day period" each place it appears therein and inserting in lieu thereof "240-day period", and

(D) by adding at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."; and

(6) by adding at the end thereof the following new subsection:

Publication in Federal Register.

"(h) AGENCY GUIDELINES.—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

"(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c)(2) of this section;

"(2) criteria for making the findings required under such subsection with respect to petitions;

"(3) a ranking system to assist in the identification of species that should receive priority review for listing; and

"(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section.

Comments. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.".

SEC. 4. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended—

(1) by amending subsection (a)—

(A) by striking out "(a) CONSULTATION.—" and inserting in lieu thereof "(a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1)";

(B) by striking out the third sentence thereof; and

(C) by adding at the end thereof the following:

"(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

"(3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d)."; 16 USC 1533.

(2) by amending the last sentence of subsection (b) to read as follows: "The Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or the permit or license applicant in implementing the agency action.";

(3) by amending each of subsections (b), (c), (d), (e)(2), (f), (g)(1) and (5), (h)(1), and (m) by striking out "subsection (a)" wherever it appears therein and inserting in lieu thereof "subsection (a)(2)";

(4) by further amending subsection (c)—

(A) by inserting "(1)" immediately after "BIOLOGICAL ASSESSMENT.—", and

(B) by adding at the end thereof the following new paragraph:

"(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the

Secretary and under the supervision of the appropriate Federal agency.";

(5) by striking out "avoid jeopardizing" and all that follows thereafter in subsection (d) and inserting in lieu thereof "not violate subsection (a)(2).";

(6) by further amending subsection (g)(1) by striking out "may jeopardize" and all that follows thereafter in the first sentence thereof and inserting in lieu thereof "would violate subsection (a)(2).";

(7) by amending subsection (g)(2)(A) by striking out "process." and inserting in lieu thereof "process; or, in the case of any agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of title 5, United States Code, with respect to the issuance of the permit or license.";

5 USC 701.

(8) by amending subsection (g)(3) by redesignating subparagraph (B) as subparagraph (C), and by inserting immediately after subparagraph (A) the following new subparagraph:

"(B) If biological opinions of both the Secretary of the Interior and the Secretary of Commerce indicate that an agency action would violate subsection (a)(2), such Secretaries shall jointly convene a review board to consider any application for exemption filed with respect to such agency action.";

(9) by further amending subsection (g)(5)—

(A) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively,

(B) by inserting "the Federal agency concerned and" immediately before "such exemption applicant" in clause (B) (as so redesignated),

(C) by redesignating subclauses (A), (B), and (C) as subclauses (i), (ii), and (iii), respectively,

(D) by striking out "will avoid jeopardizing" and all that follows thereafter in subclause (i) (as so redesignated) and inserting in lieu thereof "would not violate subsection (a)(2);", and

(E) by striking out "exemption applicant" and all that follows thereafter in the last sentence and inserting in lieu thereof "Federal agency concerned or the exemption applicant has not met its respective requirements under subclause (i), (ii), or (iii) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.";

(10) by amending subsection (g)(6) by striking out "subparagraphs (A), (B), and (C)" and inserting in lieu thereof "subclauses (i), (ii), and (iii)";

(11) by amending subsection (h)(2) to read as follows:

"(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

"(i) regardless whether the species was identified in the biological assessment; and

"(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

"(B) An exemption shall be permanent under subparagraph (A) unless—

"(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

"(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding."; and

(12) by amending the first sentence of subsection (q) to read as follows: "There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982.".

SEC. 5. Section 8 of the Endangered Species Act of 1973 (16 U.S.C. 1537) is amended—

(1) by inserting "and plants" immediately after "fish or wildlife" in subsection (b)(1);

(2) by inserting "or plants" immediately after "fish or wildlife" each place it appears in subsection (b)(3);

(3) by inserting "or plants" immediately after "fish or wildlife" in subsection (c)(1); and

(4) by striking out subsection (e).

SEC. 6. (a) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended—

(1) by adding immediately after section 8 the following new section:

"CONVENTION IMPLEMENTATION

16 USC 1537a.

"SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

International Convention Advisory Commission.

"(d) INTERNATIONAL CONVENTION ADVISORY COMMISSION.—(1) There is hereby established the International Convention Advisory Commission (hereinafter in this section referred to as the 'Commission').

Membership.

"(2) The Commission shall be composed of the following members:

"(A) One member appointed by each of the following Federal officers from his respective agency:

"(i) The Secretary.

"(ii) The Secretary of Agriculture.

"(iii) The Secretary of Commerce.

"(iv) The Director of the National Science Foundation.

"(v) The Chairman of the Council on Environmental Quality.

"(B) One member appointed by the Secretary from among officers and employees of the State agencies having fish and wildlife conservation and management responsibilities.

"(C) The Secretary of the Smithsonian Institution is invited to appoint a member.

"(3)(A) Individuals who are appointed as members of the Commission under paragraph (2) must be scientifically qualified.

Term of office.

"(B) The term of office of a member of the Commission appointed under paragraph (2)(B) is two years and an individual may be appointed under such paragraph for any number of terms; except that an individual may not be appointed under that paragraph for a term that would be a third consecutive term for that individual under that paragraph.

Travel expenses.

"(C) While away from his home or regular place of business in the performance of services for the Commission, a member appointed under paragraph (2) (B) or (C) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

"(D) Members of the Commission who are full-time officers or employees of the United States shall receive no additional compensation on account of their service on the Commission.

Chairman.

"(4)(A) The Commission shall elect a chairman from among its members. The term of office of the chairman is one year.

"(B) No recommendation referred to in paragraph (5) shall be deemed to be a recommendation of the Commission unless a majority of the members of the Commission vote for that recommendation.

Recommen[illegible]ions to Secretary.

"(5) The Commission shall make recommendations to the Secretary or his designee on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention. The Commission shall include with any such recommendation any written dissenting view made by any member.

Experts and consultants.

"(6) In the discharge of its responsibilities, the Commission shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the governmental and nongovernmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

Explanation, publication in Federal Register.

"(7) In any case in which the Scientific Authority decides not to accept a recommendation made by the Commission under paragraph (5), the Scientific Authority shall provide to the Commission a written explanation of the reasons for that decision and shall publish the explanation in the Federal Register.

Executive Secretary.

"(8)(A) The Chairman of the Commission, with the concurrence of the Commission, shall appoint an Executive Secretary for the Commission. The Executive Secretary shall carry out such duties and functions as shall be prescribed by the Commission, shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

5 USC 5101, 5331.

"(B) The Secretary shall provide the necessary staff and administrative support for the Commission.

Wildlife preservation in Western Hemisphere.

"(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere."; and

(2) by amending the table of contents by inserting immediately after the section title for section 8 the following:

"Sec. 8A. Convention implementation.".

16 USC 1537a note.

(b) Until such time as the Chairman, Members, and Executive Secretary of the International Convention Advisory Commission are appointed, but not later than 90 days after the date of the enactment of this Act, the functions of the Commission shall be carried out by the Endangered Species Scientific Authority as established by Executive Order Numbered 11911, with staff and administrative support being provided by the Secretary of the Interior as set forth in that Executive order.

16 USC 1537 note.

SEC. 7. Section 10(f) of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.".

SEC. 8. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

16 USC 1535, 1536.

"SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for each of fiscal years 1979 and 1980, not to exceed $25,000,000 for fiscal year 1981, and not to exceed $27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

"(2) not to exceed $2,500,000 for each of fiscal years 1979 and 1980, not to exceed $3,000,000 for fiscal year 1981, and not to exceed $3,500,000 for fiscal year 1982 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

"(3) not to exceed $1,500,000 for fiscal year 1980, not to exceed $1,750,000 for fiscal year 1981, and not to exceed $1,850,000 for fiscal year 1982 to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of terrestrial plants.".

Approved December 28, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-167 accompanying H.R. 2218 (Comm. on Merchant Marine and Fisheries) and No. 96-697 (Comm. of Conference).
SENATE REPORT No. 96-151 (Environment and Public Works).
CONGRESSIONAL RECORD, Vol. 125 (1979):
June 13, considered and passed Senate.
Oct. 24, H.R. 2218 considered and passed House; passage vacated and S. 1143, amended, passed in lieu.
Dec. 19, House and Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 15, No. 52:
Dec. 28, Presidential statement.

96TH CONGRESS
1ST SESSION

H. R. 2218

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1979

Mr. MURPHY of New York (for himself, Mr. BREAUX, Mr. MCCLOSKEY, Mr. FORSYTHE, Mr. BOWEN, Mr. AUCOIN, Mr. EMERY, Mr. AKAKA, Mr. DINGELL, Mr. STUDDS, Mr. PRITCHARD, and Mr. DORNAN) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

---

A BILL

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 7(q) of the Endangered Species Act of 1973 (16 U.S.C. 1536(q)) is amended to read as follows: "There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982.".

SEC. 2. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for fiscal year 1979, and not to exceed $25,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $2,500,000 for fiscal year 1979, and not to exceed $3,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

Union Calendar No. 92

96th CONGRESS
1st Session

H. R. 2218

[Report No. 96–167]

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

IN THE HOUSE OF REPRESENTATIVES

February 15, 1979

Mr. Murphy of New York (for himself, Mr. Breaux, Mr. McCloskey, Mr. Forsythe, Mr. Bowen, Mr. AuCoin, Mr. Emery, Mr. Akaka, Mr. Dingell, Mr. Studds, Mr. Pritchard, and Mr. Dornan) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

May 15, 1979

Additional sponsors: Mr. Stack, Mr. Hutto, Mr. Hughes, Mr. Oberstar, Mr. Lowry, Mr. de la Garza, and Mr. Bonker

May 15, 1979

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Insert the part printed in italic]

A BILL

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 7(q) of the Endangered Species Act of 1973 (16 U.S.C. 1536(q)) is amended to read as follows: "There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982.".

SEC. 2. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for fiscal year 1979, and not to exceed $25,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $2,500,000 for fiscal year 1979, and not to exceed $3,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 3. Subsection (f) of section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the

expiration date of the certificate of renewal of such exemption issued under this paragraph.".

Amend the title so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes".

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 96-167

ENDANGERED SPECIES ACT OF 1973 AUTHORIZATION

MAY 15, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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MR. MURPHY of New York, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 2218]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, after line 19, insert the following:

SEC. 3. Subsection (f) of section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in paragraph (C); and

(2) by adding at the end thereof the following new paragraph:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph."

Amend the title so as to read:

A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to increase the funding for the Department of the Interior and the Department of Commerce for carrying out a higher level of program activities under the Endangered Species Act for an additional three years. To accomplish this purpose, the legislation would authorize to be appropriated $25 million per year for the Department of the Interior under section 15(1), and $3 million per year for the Department of Commerce under Section 15(2). Also, the legislation would authorize to be appropriated $600,000 per year for the Endangered Species Committee and Review Boards to carry out the exemption procedure authorized by the act.

In addition, the legislation would authorize owners of certain whale parts who are presently exempted under the Act to apply for an additional three-year exemption.

LEGISLATIVE BACKGROUND

H.R. 2218 was introduced on February 15, 1979 by Mr. Murphy of New York, Mr. Breaux, Mr. McCloskey, Mr. Forsythe, Mr. Bowen, Mr. AuCoin, Mr. Emery, Mr. Akaka, Mr. Studds, Mr. Dingell, Mr. Pritchard, and Mr. Dornan. Additional cosponsors of H.R. 2218 are Mr. Stack, Mr. Hutto, Mr. Hughes, Mr. Obestar, Mr. Lowry, Mr. de la Garza, and Mr. Bonker.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on H.R. 2218 on April 6, 1979. The witness for the Department of the Interior testified in strong support of extending the funding authorization under the Act, but in favor of more moderate authorization levels than provided by H.R. 2218. The witness for the Department of Commerce testified in strong support of the extension and of authorizing such sums as may be necessary to carry out the program.

Testifying in strong support of the legislation and for increasing funding for enforcement purposes were Mr. Craig Van Note (on behalf of the Monitor Consortium), Mr. John Borneman (on behalf of the Audubon Society), Dr. Shirley McGreal (on behalf of the Primate Protection League), and Ms. Christine Stevens (on behalf of the Society for Animal Protective Legislation).

On April 30, 1979, the subcommittee ordered reported to the full Committee H.R. 2218, with amendments. On May 3, 1979, the full committee ordered reported H.R. 2218, as amended by the subcommittee.

THE AMENDMENTS

Under section 10(f) of the Act, persons owning any whale parts or products lawfully held within the United States in December 28, 1973, in the course of a commercial activity are authorized to apply for a three-year exemption to certain prohibitions listed in the act. An amendment offered by Mr. Studds would allow these owners to apply for an additional three-year exemption under the original conditions of the certificate. The committee believes the additional three-year extension will allow sufficient time for scrimshaw artists to complete work on preact scrimshaw products and dispose of such products.

The committee also adopted a technical amendment to the title of the bill.

BACKGROUND AND NEED FOR LEGISLATION

Congressional concern about rapidly deteriorating fish, wildlife and and plant habitat, indiscriminate utilization of plants and animals and increasing numbers of species threatened with extinction resulted in a series of legislative actions culminating in the enactment of the Endangered Species Act of 1973. The Act repealed the Endangered Species Conservation Act of 1969, broadened Federal responsibilities to list species and increased the Federal authorization and programs for insuring the survival of species.

The primary purpose of the Endangered Species Act of 1973 is to prevent animal and plant species endangerment and extinction caused by man's influence on ecosystem, and to return the species to the point where they are viable components of their ecosystems. The Department of the Interior estimates that 20 species become extinct per decade in the United States, and an even greater number enter the endangered category. If this rate applies worldwide an estimated 300 extinctions could occur per decade. The endangered species program is implemented through three processes: listing, consultation and recovery.

A. LISTING OF ENDANGERED AND THREATENED SPECIES

The protections provided to animal and plant species threatened with extinction are activated by the listing of a species as "endangered" or "threatened." The endangered category refers to those species which are threatened with extinction through all or a significant portion of their range, while threatened species are those that are likely to become endangered within the foreseeable future. The various prohibitions provided in the act may vary depending on whether a species is listed as "endangered" or "threatened."

Species are added to the endangered and threatened species list in two different ways. A member of the public may petition the Secretary for a listing, or the listing process may be initiated by the Department of the Interior or Commerce on the basis of the best scientific and commercial data available. If a private citizen petitions the Secretary to list a species, and presents substantial evidence in support of the petition, the Secretary is required to conduct a review of the species. Although the Department of the Interior uses a priority system to determine which of the hundreds of unlisted endangered species should be acted on first, the petitioning process interrupts the Department's priority system by requiring immediate review.

The act provides five criteria for determining whether a species is endangered or threatened. These are:

1. The present or threatened destruction, modification, or curtailment of the species habitat or range;
2. Overutilization for commercial, sporting, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanism; or
5. Other natural or manmade factors affecting its continued existence.

Any proposed listing, delisting, or reclassification is published in the Federal Register. Amendments to the act adopted in 1978 added the additional requirements that proposals to designate critical habitat be published in newspapers of general circulation in the vicinity of the habitat, and that local governments receive actual notice of all regulatory proposals. More importantly, the 1978 amendments require the Secretary to evaluate the economic impact of designating critical habitat for listed species. Under the 1978 amendments, any person may request a public meeting on proposals to list species, and the Secretary is required to hold a public meeting on any regulation proposing to designate critical habitat.

Following the review of comments and on evaluation of the best available biological data the Department may publish a notice of final rulemaking in the Federal Register. Regulatory proposals generally become effective 30 days after publication of the final determination in the Federal Register.

As of February 28, 1979, the endangered and threatened species list contained 236 domestic and 497 foreign species. An additional 158 animal and 1,850 plant species have been formally proposed for listing. The Fish and Wildlife Service has announced that it has withdrawn proposed rulemakings to designate critical habitat for various animals listed in order to comply with the additional requirements imposed by the 1978 amendments. In addition, the Service announced that proposals to add some 1,700 plant species to the list, although they have not been withdrawn, may not be finalized until supplemented with additional information as required by the 1978 amendments.

Category	Number of endangered species			Number of threatened species		
	United States	Foreign	Total	United States	Foreign	Total
Mammals	33	227	250	3	18	21
Birds	67	144	211	3		3
Reptiles	11	47	58	10		10
Amphibians	5	9	14	2		2
Fishes	29	10	39	12		12
Snails	2	1	3	5		5
Clams	23	2	25			
Crustaceans	1		1			
Insects	6		6	2		2
Plants	20		20	2		2
Total	197	440	637	39	18	57

Note: Number of species currently proposed: 158 animals, 1,850 plants (approximately); number of critical habitats proposed, 73; number of critical habitats listed, 33; number of recovery teams appointed, 66; number of recovery plans approved, 20; and number of cooperative agreements signed with States, 22.

Although most of the Department's actions under the Act have involved the listing of species, the act also authorizes the Secretary to delist or reclassify species in much the same manner as the initial listing. Certain species that closely resemble listed endangered or threatened species can also be listed under the act if the Secretary finds that the listing of the physically similar species will facilitate enforcement of the act. The ultimate goal of the Endangered Species Act is to focus sufficient attention on listed species so that, in time, they can be returned to a healthy state and removed from the list.

Once an animal or plan species has been listed as endangered, the act prohibits a number of activities involving the listed species unless an exception applies or a permit is granted. These prohibitions include:

1. The taking of endangered animal species;
2. The importing or exporting of listed species;
3. The selling or delivering any species which are illegally taken; or
4. The sale of listed species in interstate or foreign commerce.

These prohibitions apply to live or dead species; to their parts or products; to all progeny of animals born on or after December 28, 1973; and to animals held at that time for sale or barter.

All of these prohibitions apply automatically in the case of a species which is listed as endangered. In contrast, when a species is listed as threatened, the Secretary has the discretion to proscribe actions as he deems necessary to provide for the conservation of the species.

B. SECTION 7 AND THE CONSULTATION PROCESS

Section 7 of the Endangered Species Act, as amended in 1978, requires Federal agencies to insure that any action authorized, funded, or carried out by them does not jeopardize the continued existence of listed species or destroy or adversely modify the critical habitat of any endangered or threatened species. This section also requires Federal agencies to consult with the Departments of Interior and Commerce (in the case of marine species) when any of their actions may affect listed species. This consultation process is central to the resolution of conflicts under the act.

Typically the consultation process will be initiated by a Federal agency when it discovers that it may be taking an action that will have an impact on an endangered species. The agency contacts the Fish and Wildlife Service or the National Marine Fisheries Service, depending on the species involved, and requests assistance to determine whether there is a potential violation of section 7. The Service initially conducts a threshold examination in an attempt to determine the nature of any impact on a listed species. At the conclusion of the threshold examination the Service issues a biological opinion indicating whether the action is likely to jeopardize the species or adversely modify the critical habitat, and suggesting possible modification which would avoid any adverse impact.

The mandate of section 7 applies once a species is listed or once "critical habitat" is designated for any listed species. The term "critical habitat" was not defined in the 1973 Act, but regulations promulgated pursuant to the Act defined it to include "air, land or water areas . . . the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. . . ." The amendments adopted during the

95th Congress significantly altered this definition. The Act now defines "critical habitat" as "specific areas . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management consideration or protection."

C. THE EXEMPTION PROCESS

Prior to the 1978 amendments, the Endangered Species Act did not provide any opportunity for exemptions from the requirements of section 7. The 1978 amendments significantly altered the structure of the Act by establishing a procedure through which Federal agencies can receive exemptions from the requirements of the act from a 7-member committee.

Any application for an exemption would initially be considered by a three member review board which would make recommendations to the seven member cabinet-level committee. The Committee can only grant an exemption if 5 of the 7 members find that there are no reasonable and prudent alternatives to the project and that the benefits of the project clearly outweigh the benefits of identified alternatives. The 7-member committee is composed of the following individuals:

(A) Secretary of Agriculture;
(B) Secretary of the Army;
(C) Chairman, Council of Economic Advisors;
(D) Administrator, Environmental Protection Agency;
(E) Secretary of the Interior;
(F) Administrator, National Oceanic and Atmospheric Administration; and
(G) An individual from the affected State appointed by the President.

The Endangered Species Committee has considered two applications for exemptions to date involving the Tellico Dam and Reservoir in in Tenneessee and the Grayrocks Reservoir in Wyoming. The committee denied an exemption for the Tellico project and granted an exemption for the Grayrocks project. They denied the exemption for Tellico on the grounds that there were reasonable alternatives to the Reservoir available which would avoid jeopardizing the continued existence of the snail darter.

A third application for exemption has been filed by the Pittston Oil Co. for their proposed refinery in Eastport, Maine. The U.S. Fish and Wildlife Service issued a biological opinion in December, 1978 which found that the refinery is likely to have an adverse impact on bald eagle populations in the area.

ENDANGERED SPECIES FUNDING

General authorizations of appropriations under the act for the Departments to carry out their functions and responsibilities, other than certain financial assistance to the States under section 6, are provided by section 15 of the act. Section 15 authorizes to be appropriated to the Department of the Interior $23 million for fiscal year 1979 and $12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980. To the Department of Commerce, section 15 authorizes to be appropriated not to exceed $2.5 million for fiscal year 1979, and $12.5 million for the period beginning October 1, 1979, and ending March 31,

1980. In addition, under section 7(g) of the Act, there is authorized to be appropriated to the Secretary of the Interior $600,000 for fiscal year 1979 and $300,000 for the period beginning October 1, 1979 and ending March 31, 1980, to assist the Review Boards and the Endangered Species Committee in carrying out their functions under the act.

Information received from the Interior Department places the number of positions involved in administering the overall endangered species program at 205. The positions are specified according to program function as follows:

Program function:	*Number of positions*
Listing	18
Protection	99
Consultation and exemption process	14
Maintenance and recovery	74
Total	205

One of the changes made by the 1978 amendments and which the Interior Department will soon address in regulations is the requirement that economics and other factors be considered prior to designating critical habitat. As a result, on March 6, 1979 the Department withdrew all pending critical habitat proposals and delayed the addition of some 2,000 species, largely plants, until the procedural requirements have been complied with.

Also in accordance with the 1978 amendments, recovery plans must be prepared for all species that will benefit from recovery activities. To meet this goal, the Department's regional offices are formulating recommendations on recovery needs for individual species, methods of plan preparation, appropriate time frames, coordination of land acquisition and research. During fiscal year 1978, nine new recovery plans were approved, bringing the total to 19 completed plans. Another 51 plans are in various stages of development. In all, more than 60 recovery teams have been appointed to chart recovery plans for 75 listed species.

Since passage of the act in 1973, significant progress in protecting threatened and endangered species has been made. In 1973, there were 49 whooping cranes in the wild, now there are 84. In the same period, the Aleutian Canada goose population has gone from 700 to 1500; the Everglade kite population from 47 to 160 and the Puerto Rican parrot population from 12 to 18. The population of some species which were declining have stabilized. These include the bald eagle, peregrine falcon, Attwater prairie chicken, and Kirtland's warbler.

The following chart, prepared by the Department of the Interior, indicates how endangered species funds have been or will be utilized in fiscal years 1978 and 1979.

[In thousands of dollars]

	Fiscal year 1978	Fiscal year 1979
Listing	1,319	2,219
Protection	4,746	4,746
Consultation	546	2,486
Maintenance and recovery	4,822	4,822
Cooperation with States	3,920	2,940
Common support services	1,205	1,437
Total	16,558	18,650

The endangered species conservation program of the Department of Commerce, administered by the National Oceanic and Atmospheric Administration (NOAA), is responsible for most marine species of mammals, and marine species of fish, reptiles, and invertebrates. Under interagency agreements with the Department of the Interior, NOAA receives assistance in listing, protecting, and controlling the importation of endangered and threatened marine species. NOAA research activities are directed toward developing programs for assessment, protection and recovery of species currently listed as endangered, and identifying any additional species which are threatened or endangered.

The need for this legislation arises due to the upcoming expiration on March 31, 1980 of the authorizations for appropriations under sections 7 and 15 of the act. Since the fiscal year 1980 authorizations are only for 6 months, the Budget Act requires the committee to complete action on full fiscal year 1980 authorizations by May 15, 1979.

CONCLUSIONS AND RECOMMENDATIONS ON FUNDING

The committee feels that a higher level of funding than previously authorized is necessary in view of the additional requirements imposed on the Secretary by Public Law 95-632, such as those for economic impact statements, newspaper notices, and increased recovery plan implementation. Further, testimony received by the subcommittee reflected a need for stepped up enforcement activities at designated ports of entry of wildlife products.

EXEMPTIONS

An amendment to the bill was adopted which would permit holders of an exemption to allow owners of certain whale parts and products which were held in stock prior to 1973 to continue trading such products for three additional years. Existing law allows this exemption to be in effect until October 1979.

This additional exemption under the Endangered Species Act for owners of whale parts and products was deemed necessary due to the large numbers of existing whale parts and products remaining in the domestic market. The Department of Commerce has presently certified 57 exemptions pursuant to the exemption language under existing law. Of these 57 exemption certificates, 48 have been issued for scrimshaw products, and 9 have been issued for sperm whale oil. At the time the certificates were issued there were 78,400 pounds of whale teeth and whale bone known to be in existence and held by persons within the United States. There were also 27,554,946 pounds of sperm whale oil in existence at the time certificates of exemption were issued for that product.

The bulk of the sperm whale oil has been disposed of during the last 3 years. A major portion of this oil (16 million pounds) was originally held by the General Services Administration and subsequently sold to a private company in Cleveland, Ohio. During the last three years, the company in Ohio has disposed of most of this sperm whale oil. Other companies in the mid-West, specifically pharmaceutical companies, are also holders of exemption certificates by the Commerce Department. These pharmaceutical companies use only small quantities of sperm whale oil in cosmetics and pharmaceuticals and, therefore, their stocks have not diminished as significantly as the other holdings. In addition to the use of sperm whale oil for pharmaceuticals and cosmetics, this oil is used for the manufacture of candles and the lubrication of fine machinery. It has been determined by the Commerce Department that once a product is manufactured from the oil it is deemed to be consumed and disposed of, thereby not requiring a certificate of exemption. It is anticipated by the Department of Commerce that the bulk of the sperm whale oil can be disposed of within the additional three year period provided by the committee amendment.

During the past 3 years the Department of Commerce estimates that 25 percent of the finished scrimshaw products, the raw whale teeth, and the whale bone have been disposed of. The bulk of the stocks are held on the West Coast in Washington and Alaska, and the remaining quantities are generally found in the New England States. Since only 25 percent of the some 78,000 pounds of whale teeth and whale bone have been disposed of at the present time, the committee determined that an additional three-year exemption was necessary to allow the final disposition of the remaining stock.

What the Bill Does—Section-by-Section Analysis

As indicated in the legislative background of this report, the committee ordered reported to the House H.R. 2218, with amendments. Following is a section by section summary of H.R. 2218, as amended.

Section 1

To assist the Endangered Species Committee and the Review Boards in carrying out their functions related to the exemptions process, the bill authorizes to be appropriated not to exceed $600,000 for each of fiscal years 1980, 1981, and 1982.

Section 2

Section 15(1) of the act would authorize appropriations, except for Sections 6 and 7, at a level of $25 million for each of fiscal years 1980, 1981, and 1982 for the Department of the Interior to carry out a higher level of endangered species protection. This represents a $2 million increase over the fiscal year 1979 atuhorization level. Section 15(2) would provide the Department of Commerce with an authorization level of $3 million for each of fiscal years 1980, 1981, and 1982, thereby increasing the funding level by $500,000 over fiscal year 1979.

Section 3

Section 3 would allow owners of pre-Act endangered species parts, defined as sperm whale oil and scrimshaw, currently doing business under a three year exemption allowed by the 1976 amendments to the act to apply for an additional three year exemption. The conditions applicable to the original certificate of exemption would also apply to the extension of the exemptions.

Cost of Legislation

In the event the legislation is enacted into law, the committee estimates the maximum cost to the Federal Government for the 3-year life of the program from October 1, 1979, through September 30, 1982—would be $85.8 million, broken down as follows;

[In millions of dollars]

Section	Fiscal year 1980	Fiscal year 1981	Fiscal year 1982
7(g)	0.6	0.6	0.6
15(1)	25.0	25.0	25.0
15(2)	3.0	3.0	3.0
Total	28.6	28.6	28.6

Note: Total 3-year cost, 85.8.

INFLATIONARY IMPACTS STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the House of Representatives, the committee estimates that the enactment of H.R. 2218 would have no significant inflationary impact on the prices and cost in the national economy.

COMPLIANCE WITH CLAUSE 2(l)(3) OF RULE XI

With respect to the requirements of clause 2(l)(3) of rule XI of the House of Representatives:

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment has not held oversight hearings on the Endangered Species Act during this Congress. However, the Subcommittee does intend to hold such hearings during the 96th Congress.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 4(c)(2) of rule X.

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974 in reference to H.R. 2218 and follows herewith:

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 9, 1979.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, 1334 Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2218, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981 and 1982.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Robert D. Reischauer
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MAY 9, 1979.

1. Bill No.: H.R. 2218.
2. Bill title: A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981 and 1982.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, May 3, 1979.
4. Bill purpose: The bill authorizes the appropriation of $600,000 for the Endangered Species Committee for each of the fiscal years 1980, 1981 and 1982. This committee reviews applications from Federal agencies to determine whether to approve a Federal action that jeopardizes the continued existence of any endangered species or results in the destruction of the endangered species' habitat.

The bill also authorizes the appropriation of $25 million for the U.S. Fish and Wildlife Service (USFWS) for each of the fiscal years 1980, 1981 and 1982 for the determination of endangered species, the development and implementation of plans for the survival of endangered species and the determination of whether a federal action jeopardizes the existence or habitat of an endangered species. The National Oceanic and Atmospheric Administration (NOAA) is also authorized $3.0 million for each of the fiscal years 1980, 1981, and 1982 to carry out its responsibilities under the Endangered Species Act.

In fiscal year 1979, $600,000 was authorized for the Endangered Species Committee, $23 million for the USFWS and $2.5 million for the NOAA activities covered by this bill.

5. Cost estimate:

Net additional authorization:	
Fiscal year:	*Millions*
1980	$3.3
1981	28.60
1982	28.60
1983	-----
1984	-----
Estimated outlays:	
Fiscal year:	
1980	2.97
1981	26.07
1982	28.60
1983	2.86
1984	-----

The costs of this bill fall within budget function 300.

6. Basis of estimate: For fiscal year 1980, the net additional authorization represents the net change to authorizations already existing. The bill increases the 1980 authorization for the USFWS from $12.5 million to $25 million, and for the Endangered Species Committee from $300,000, to $600,000. The $3.0 million authorized in this bill for NOAA in fiscal year 1980 represents a decrease from the existing authorization of $12.5 million. (The 1979 NOAA appropriation for this purpose is $2.3 million; the President's budget request for 1980 is $2.4 million.)

For the purpose of this estimate, it is assumed that the full amounts authodized will be appropriated. Outlays are estimated by applying a two-year spendout rate to the level of appropriations authorized for NOAA, USFWS and the expenses of the review committee. The two-year spendout is estimated to be 90 percent the first year and 10 percent the second year, based on consultation with NOAA and USFWS.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: James V. Manaro.
10. Estimate approved by:

C. G. NUCKOLS,
(For James L. Blum,
Assistant Director, for Budget Analysis).

DEPARTMENTAL REPORTS

Reports were received on H.R. 2218 from the Department of the Interior and the Council on Environmental Quality. In addition, Executive Communications Nos. 1257 and 777 were received from the Secretaries of Commerce and Interior, respectively, and follow herewith:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 5, 1979.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our comments in H.R. 2218, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

We recommend that this legislation be enacted, if amended as suggested herein.

H.R. 2218 would amend section 7(q) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(g)) by authorizing not to exceed $600,000 for each of fiscal years 1979, 1980, 1981 and 1982 for the Secretary of the Interior and the Endangered Species Committee. It would also amend section 15 to authorize not to exceed $23 million for fiscal year 1979, and not to exceed $25 million for each of fiscal years 1980, 1981 and 1982 for this Department to carry out its responsibilities under the act.

We recommend that the authorization level for section 15(1) be amended not to exceed $19,332,000 for the fiscal year ending September 30, 1980, and such sums as may be necessary for the fiscal years ending September 30, 1981 and 1982. This will make the section 15(1) authorization consistent with the administration's 1980 budget.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely

RICHARD MYSHAK,
Acting Assistant Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., April 5, 1979.

Hon. JOHN M. MURPHY,
Chairman, Merchant Marine and Fisheries Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of February 21 inviting the Council on Environmental Quality to comment on H.R. 2218, a bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982. We appreciated the opportunity to review this proposed legislation. At this time, however, the Council has no comment.

Sincerely,

JANE H. YARN,
Council Member.

[Executive Communication No. 1257]

THE SECRETARY OF COMMERCE,
Washington, D.C., April 3, 1979.

Hon. THOMAS P. O'NEILL, Jr.
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed are six copies of a bill "To authorize appropriations to carry out the Endangered Species Act of 1973, as amended, through fiscal year 1982.", together with a statement of purpose and need in support thereof.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this legislation to the Congress and further that its enactment would be in accord with the program of the President.

Sincerely,

CHARLES L. HASLAM,
Acting Secretary of Commerce.

Enclosures.

A BILL To authorize appropriations to carry out the Endangered Species Act of 1973, as amended, through fiscal year 1982

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1542(2)) is further amended by deleting the words "not to exceed $12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980," after the date "September 30, 1979," and inserting in lieu therefor the following language:

> "not to exceed $2,420,000 for the period beginning October 1, 1979, and ending September 30, 1980, and such sums as may be necessary for each of fiscal years 1981, and 1982,".

STATEMENT OF PURPOSE AND NEED

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seg.), was passed in December 1973. Primary responsibility for this legislation was placed with the Departments of Commerce and the Interior. General authorization of appropriations under the Act for the Departments to carry out functions and responsibilities, other than certain financial assistance to the States under section 6, is provided for by section 15 of the Act. The authorization for appropriations under section 15 expires on March 31, 1980. This section, as amended by P.L. 95-632, authorized to the Department of Commerce not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980.

Under section 15 of the Act, funds in the approximate amount of $2,420,000 will be required to carry out the program during fiscal year 1980. This figure represents the best estimate of our Department's need to implement the program and is consistent with the Department's FY 1980 budget request. With these funds we will continue the development and maintenance of conservation programs for fish, wildlife, and plant species of the marine environment.

This draft legislation would extend section 15(2) for three years fiscal years, 1980, 1981, and 1982.

[Executive Communication No. 777]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 28, 1979.

Hon. THOMAS P. O'NEILL,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith is draft legislation to extend and increase the authorization of appropriations in section 15(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1542; 90 Stat. 724).

We recommend that this proposed legislation be referred to the appropriate Committee for consideration, and that it be enacted.

Section 15(1) of the Endangered Species Act authorizes appropriations to the Department of the Interior to carry out functions and responsibilities under the act other than grant-in-aid to States. The Act originally authorized an amount not to exceed $4 million in fiscal year 1974, $8 million in fiscal year 1975 and $10 million in FY 1976. An amendment June 30, 1976 (Public Law 94-325) extended the authorization at an amount not to exceed $1.8 million for the transition period, July 1, 1976, through September 30, 1976, and $25 million per year for fiscal year 1977 and fiscal year 1978. An amendment November 10, 1978 (Public Law 95-632) extended the authorization at an amount not to exceed $23 million for 1979 and not to exceed $12.5 million for the first 6 months of fiscal year 1980. Our proposal would extend the authorization at amounts not to exceed $19,332,000 for the full 1980 fiscal year, and such sums as may be necessary for fiscal year 1981 and fiscal year 1982.

Congressional concern about rapidly deteriorating fish, wildlife and plant habitat, indiscriminate utilization of plants and animals and increasing numbers of species threatened with extinction resulted in a series of legislative actions culminating in enactment of the Endangered Species Act of 1973, December 28, 1973 (16 U.S.C. 1531–1543; 87 Stat. 884). The act repealed the Endangered Species Conservation Act of 1969 (83 Stat. 275), broadened Federal responsibilities to list species and increased Federal authorizations and programs for insuring the survival of species.

The primary purpose of the endangered species program as directed by the 1973 Act is to prevent plant and animal species endangerment and extinctions caused by man's influence on ecosystems, and to return the species to the point where they are viable components of their ecosystem. Man's activities threaten a growing number of species with extinction, and it appears that the number of extinctions has increased at a rate paralleling human population growth. For the United States there appear to be some 200 species going extinct per decade and an even greater number entering the endangered category. If this rate applies worldwide, an estimated 3,000 extinctions will occur each decade.

Appropriations provided under the authority of section 15 are divided among four programs—Listing, Protection, Consultation and Exemptions, and Maintenance and Recovery.

Listing species of plants and animals as Endangered or Threatened is the most basic function of the Endangered Species Program. Species must be listed before they can receive the other benefits provided by the act. For some species, listing alone will provide adequate protection. Six hundred and ninety-four species have been listed through fiscal year 1978 of which 637 are endangered and 57 are threatened. During fiscal year 1978, 75 species surveys were initiated to obtain status information to support species listings. By the end of fiscal year 1982, 100 species surveys will be initiated annually. Although there was no formal review of the current status of listed species in fiscal year 1978, by the end of fiscal year 1982, 200 species per year will be reviewed in accordance with the five-year review requirement of the amendments to the act.

The protection program provides for the detection and prosecution of violations under the act and Convention on International Trade in Endangered Species of Wild Fauna and Flora. Surveillance of areas of concentration of native endangered species to prevent taking occurs through the use of law enforcement strategy plans. During fiscal year 1978, 27 strategy plans benefiting 13 species were implemented and by the end of fiscal year 1982, 45 plans benefiting 30 species will be implemented annually. In order to control the importation and exportation of listed and Convention species, special agents and inspectors are assigned to designated and non-designated ports of entry. During fiscal year 1978 approximately 47,000 wildlife shipments were inspected to detect possible act and Convention violations. By the end of 1982, approximately 60,000 wildlife shipments will be inspected per year. In addition to detection and prosecution of violations, the protection program also involves the issuance and investigation of permits. These permits exempt certain activities for scientific purposes or for enhancing the propagation or survival of listed species from complying with the act. In fiscal year 1978, 5,463 permit applications were reviewed. By fiscal year 1982, we project that 7,000 permit applications will be reviewed annually.

The consultation and exemption program provides both informal and formal assistance to other Federal agencies to help them insure that the actions do not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of its critical habitat. During fiscal year 1978, approximately 400 formal and 1,000 informal consultations were conducted. By the end of fiscal year 1982, 800 formal and 4,200 informal consultations will be conducted per year. As the provision allowing for exemptions to section 7 has only recently been enacted, we have not been able to estimate the number of exemption applications that will be submitted.

The Maintenance and Recovery program promotes the conservation and survival of endangered and threatened species through the development and implementation of recovery plans or programs identifying species management and research needs. During fiscal year 1978, development was initiated on nine new recovery plans bringing the total number of plans completed or under development to 70. Implementation of recovery plans currently benefit 75 species. By the end of fiscal year 1982 development will be initiated on 100 new recovery plans per year and more than 250 plans will be completed or under development. Implementation of recovery plans in fiscal year 1982 will benefit 125 species.

We urge enactment of this proposed legislation in order that we may continue in our efforts to preserve our living natural resources.

The Office of Management and Budget has advised that enactment of this legislation would be in accord with the President's program.

Sincerely,

ROBERT HERBST,
Assistant Secretary.

Enclosure.

A BILL To extend the authorization for appropriations to carry out the Endangered Species Act of 1973, as amended.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That section 15(1) of the Endangered Species Act of 1973, (16 U.S.C. 1542) as amended is further amended by striking all that follows the words "September 30, 1979," and inserting in lieu thereof the following: "not to exceed $19,332,000 for the fiscal year ending September 30, 1980, and such sums as may be necessary for the fiscal year ending September 30, 1981, and the fiscal year ending September 30, 1982."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECS. 7(q), 10(f), and 15 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(q), 1539(f), 1542).

Sec. 7. * * *

(q) Authorization.—[There is authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e)((f), (g), and (h) of this section not to exceed $600,000 for fiscal year 1979, and not to exceed $300,000 for the period beginning October 1, 1979, and ending March 31, 1980.] *There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982.* The Chairman of the Committee shall report to the Congress before the end of fiscal year 1979 with respect to the adequacy of the budget authority contained in this subsection.

* * * * * * *

Sec. 10. * * *

(f) (1) As used in this subsection—

(A) The term 'pre-Act endangered species part' means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United Sates on December 28, 1973, in the course of a commercial activity.

(B) The term 'scrimshaw product' means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate *unless such exemption is renewed under paragraph (8)*; and

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

* * * * * * *

[AUTHORIZATION OF APPROPRIATIONS]

[SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

[(1) not to exceed $25,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1977, and the fiscal year September 30, 1978, not to exceed $23,000,000 for the fiscal year ending September 30, 1979, and not to exceed $12,500,000 for the period beginning October 1, 1979, and ending March 31, 1980.

[(2) not to exceed $5,000,000 for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, not to exceed $2,500,000 for the fiscal year ending September 30, 1979, not to exceed $12,500,000 for the period beginning October 1, 1979 and ending March 31, 1980, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. *Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—*

(1) not to exceed $23,000,000 for fiscal year 1979, and not to exceed $25,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(2) not to exceed $2,500,000 for fiscal year 1979, and not to exceed $3,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

[From the Congressional Record, Sept. 20, 1979]

HOUSE COMMITTEE ON RULES CLEARED H.R. 2218; REFERRED TO THE HOUSE CALENDAR

Mr. Frost. Committee on Rules, House Resolution 417, Resolution providing for the consideration of H.R. 2218. A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982 (Rept. No. 96–456). Referred to the House Calendar.

PROPOSED AMENDMENT TO H.R. 2218 SUBMITTED BY MR. BREAUX

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

By Mr. Breaux.

—Page 3, after line 2 insert the following:

Sec. 3. Section 3(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (11)) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a)(2).".

Sec. 4. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (f)(2)(B)(i) to read as follows:

"(i) not less than 60 days before the effective date of the regulation, publish—

"(I) the text of the proposed regulation in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text) in a newspaper of general circulation within or adjacent to such habitat;";

(2) by amending subsection (f)(2)(C)(ii)—

(A) by striking out "subsection (b)(A), (B), and (C)" and inserting in lieu thereof "subsection (b)(1)(A), (B), and (C)",

(B) by striking out "120-day period" each place it appears therein and inserting in lieu thereof "225-day period", and

(C) by inserting at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."

(3) by adding at the end thereof the following new subsection:

"(h) Guidelines and Procedures.—The Secretary shall develop and implement guidelines and procedures to ensure that the purposes of this section are achieved efficiently and effectively. Such guidelines and procedures shall include, but are not limited to—

"(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c)(2) of this section;

"(2) criteria for making the findings required under such subsection with respect to petitions;

"(3) a ranking system to ensure that species facing a high degree of threat receive priority review for listing; and

"(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section.".

Sec. 5. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is further amended—

(1) by amending subsection (a)—

(A) by striking out "(a) Consultation.—" and inserting in lieu thereof "(a) Federal Agency Actions and Consultations.—(1)";

(B) by striking out the third sentence thereof; and

(C) by adding at the end thereof the following:

"(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

"(3) For the purposes of paragraph (2) the term 'endangered species and threatened species' includes every species of fish or wildlife or plant that is listed or proposed to be listed under section 4; except that paragraph (2) shall cease to apply for purposes of an agency action to any species so proposed for listing unless, within 90 days after consultation regarding the agency action is concluded, the Secretary publishes in the Federal Register a final regulation listing such species.";

(2) by amending each of subsections (b), (c), (d), (e)(2), (f), (g)(1) and (5), (h)(1), and (m) by striking out "subsection (a)" wherever it appears therein and inserting in lieu thereof "subsection (a)(2)".

(3) by further amending subsection (c)—

(A) by inserting "(1)" immediately after "BIOLOGICAL ASSESSMENT.—", and

(B) by adding at the end thereof the following new paragraph:

"(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in consultation with the Secretary and under the supervision of the appropriate Federal agency.";

(4) by further amending subsection (g)(1) by striking out "may jeopardize" and all that follows thereafter in the first sentence thereof and inserting in lieu thereof "would violate subsection (a)(2).";

(5) by amending subsection (g)(3)(A) by striking out "process," and inserting in lieu thereof "process; or, in the case of an agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of title 5, United States Code, with respect to the issuance of the permit or license.";

(6) by amending subsection (g)(3) by redesignating subparagraph (B) as subparagraph (C), and by inserting immediately after subparagraph (A) the following new subparagraph:

"(B) If more than one application for exemption is filed for the same agency action, the same review board shall be convened for each application and shall consider each such application in the manner set forth in paragraph (5).";

(7) by amending subsection (g)(5)—

(A) by redesignating clause (1) and (2) as clauses (A) and (B), respectively,

(B) by striking out "such exemption applicant" in clause (B) (as to redesignated) and inserting in lieu thereof "the Federal agency or exemption applicant, as the case may be", and

(C) by redesignating subclasses (A), (B), and (C) as subclauses (i), (ii), and (iii), respectively; and

(8) by amending subsection (h)—

(A) by amending paragraph (2)(A) to read as follows:

"(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute, but only if a biological assessment has been conducted under subsection (c) with respect to such agency action, a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action, regardless whether the species was identified in the biological assessment."; and

(B) by amending the first sentence of paragraph (2)(B) to read follows: "An exemption shall not be permanent under subparagraph (A) if the Secretary finds, on the basis of the best scientific and commercial data available to him, that the exemption will result in the extinction of a species that was not the subject of the consultation under subsection (a)(2) relating to the agency action concerned or was not identified in any biological assessment that was prepared under subsection (c) before, or in conjunction with, the Committee consideration relating to the exemption.".

SEC. 6. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended—

(1) by striking out subsection (e) of section 8;

(2) by adding immediately after section 8 the following new section:

"CONVENTION IMPLEMENTATION

"SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—For purposes of the Convention, the Management Authority shall carry out, but is not limited to carrying out, the following functions:

"(1) Issue permits and certificates as required by the Convention.

"(2) Apply to each permit or certificate that authorizes the importation, exportation, or introduction from the sea of a specimen of any species included in Appendix I of the Convention appropriate conditions and restrictions so that—

"(A) the importation will be for purposes that are not detrimental to the survival of the species of which the specimen is a member;

"(B) the exportation or introduction from the sea will not be detrimental to the survival of such species; and

"(C) in the case of importation or introduction from the sea, the specimen will not be used primarily for commercial purposes.

"(3) Apply to each permit or certificate that authorizes the exportation or introduction from the sea of a specimen of any species included in Appendix II of the Convention appropriate conditions and restrictions so that trade in other species listed in either—

"(A) Appendix I of the Convention; or

"(B) Appendix II of the Convention pursuant to paragraph 2(a) of Article II thereto; will be brought under effective control.

"(4) Apply to each permit or certificate that authorizes the exportation or introduction from the sea of a specimen of any species included in Appendix II of the Convention pursuant to paragraph 2(a) of Article II thereto appropriate conditions and restrictions so that the exportation or introduction from the sea will not be detrimental to the survival of the species of which the specimen is a member.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—For purposes of the Convention, the Scientific Authority shall carry out only the following functions:

"(1) Advise the Management Authority—

"(A) whether the importation of a specimen of any species included in Appendix I of the Convention will be for purposes that are not detrimental to the survival of the species of which the specimen is a member; and

"(B) if such specimen is a living specimen, whether the proposed recipient of the specimen is suitably equipped to house and care for the specimen.

"(2) Advise the Management Authority whether the exportation or introduction from the sea of a specimen of any species included in Appendix I or II of the Convention (except species included pursuant to paragraph 2(b) of Article II thereto) will not be detrimental to the survival of the species of which the specimen is a member.

"(3) Recommend to the Management Authority conditions and resolutions appropriate and reduction approximate to carry out paragraphs (3) and (4) of subsection (b).

"(4) Monitor export permits referred to in paragraphs (3) and (4) of subsection (b) and the actual exports of specimens made under the authority of such permits and, if the Scientific Authority determines that the exportation of any species included in Appendix II of the Convention should be limited in order to maintain such species at a level well above the level at which the species might become eligible for inclusion in Appendix I, recommend to the Management Authority suitable measures that should be considered in the granting of export permits for specimens of any such species.
The Scientific Authority shall base the advice and recommendations required of it under this subsection on the best available scientific and commercial data. Advice given by the Scientific Authority under paragraphs (1) or (2) may not be conditioned upon the acceptance of recommendations made by it under paragraph (3) with respect to the species concerned.

"(d) ADVISORY PANEL.—(1) There is established the Endangered Species Advisory Panel (hereinafter in this subsection referred to as the 'Panel').

"(2) The Panel shall be composed of the Director of the United States Fish and Wildlife Service, who shall also serve as the chairman of the Panel, and an even number (but not more than 8) of other members appointeed by, and who serve at the pleasure of, the Secretary. No individual is eligible for appointment as a member of the Panel unless that individual is knowledgeable or experienced in the conservation of wild fauna or flora.

"(3) The Panel shall meet at the call of the chairman.

"(4) The Secretary shall provide to the Panel necessary staff and administrative support.

"(5) The members of the Panel, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties of the Panel. Each member of the Panel shall be reimbursed for actual expenses incurred in the performance of such duties.

"(6) The Panel shall provide technical advise to the Management Authority and to the Scientific Authority on matters arising in the administration of their respective functions under the Convention.

"(7) The Federal Advisory Committee Act does not apply to the activities of the Panel.

"(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent the United States in all regards as required by the Convention on Nature Protection and Wilderness Preservation in the Western Hemisphere,"; and

(3) by amending the table of contents by inserting immediately after the section title for section 8 the following:

"Sec. 8A. Convention implementation.".

SEC. 7. Section 10(f) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.".

[From the Congressional Record, Oct. 19, 1979]

HOUSE CONSIDERATION AND APPROVAL OF H. RES. 417, PROVIDING FOR CONSIDERATION OF H.R. 2218, ENDANGERED SPECIES ACT AUTHORIZATIONS, 1980–82

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 417 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 417

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and amendment made in order by this resolution and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, the bill shall be read for amendment under the five-minute rule. In lieu of the amendment recommended by the Committee on Merchant Marine and Fisheries now printed on page 3, line 3 through page 4, line 2 of the bill, it shall be in order to consider an amendment printed in the Congressional Record of September 20, 1979, by Representative Breaux, and all points of order against said amendment for failure to comply with the provisions of clause 7, rule XVI, are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. After the passage of H.R. 2218, it shall be in order in the House to move to take from the Speaker's table the bill S. 1143 and to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 2218 as passed by the House.

The SPEAKER pro tempore. The gentleman from Texas (Mr. Frost) is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Maryland (Mr. Bauman), pending which I yield myself such time as I may consume.

Mr. Speaker House Resolution 417 is an open rule providing for the consideration of H.R. 2218 which authorizes appropriations for the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

The rule provides for 1 hour of general debate with the time to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries. The resolution also makes in order, in lieu of the amendment recommended by the Merchant Marine Committee now printed in the bill, an amendment which was printed in the Congressional Record of September 20 by Mr. Breaux, the chairman of the Fisheries and Wildlife Subcommittee. As introduced, H.R. 2218 was a simple authorization for fiscal years 1980 through 1982. However, the proposed amendments amend several provisions of the Endangered Species Act, and as such, are not germane to the bill as introduced. The resolution provides a waiver of clause 7, rule XVI, the germaneness clause, to allow consideration of these amendments.

Should the House pass H.R. 2218, the resolution will allow the House to consider S. 1143, the Senate's Endangered Species Act authorization. The rule will allow the House to strike all after the enacting clause of the Senate bill and to substitute the language of the House passed bill.

H.R. 2218 authorizes $28.3 million for the activities of the Departments of Interior and Commerce under the Endangered Species Act. Included in the authorization is $600,000 for the activities of the Endangered Species Committee and Review Boards which were created by the 1978 amendments to the act.

Mr. Speaker, House Resolution 417 is a simple open rule which will allow for amendments to the authorization amounts as well as amendments to the amendments proposed by Mr. Breaux. I would urge my colleagues to adopt this rule so that we may proceed to the consideration of H.R. 2218.

Mr. BAUMAN. Mr. Speaker, the gentleman from Texas has done an adequate job of describing the rule we have before us. I would therefore like to take a few moments to draw to the attention of my colleagues several of the provisions of H.R. 2218 and the Endangered Species Act in general.

First, the bill authorizes appropriations of $25.6 million to the Department of the Interior and $3 million to the Department of Commerce in each of the next 3 fiscal years to carry out their responsibilities under the Endangered Species Act of 1973. This results in a total authorization of $85.8 million over the next 3 years. This is an exceptionally large sum especially when one calls to mind the endless stories of questionable actions taken by the Endangered Species Committee concerning the supposed destruction of the habitat of so-called endangered species.

Furthermore, Mr. Speaker, the Members of this body should be aware of the findings of the GAO in their report of July 2, 1979 entitled, "Endangered Species—A Controversial Issue Needing Resolution." The report first states that the cornerstone of effective implementation of the Endangered Species Act is the process used by the Fish and Wildlife Service to determine which species should be listed as endangered or threatened and which species should be reclassified or removed from the lists. Unfortunately GAO found that FWS had not consistently applied existing policies, procedures, and practices used to list species, nor had they periodically reviewed listed species or established criteria to determine if their status had changed.

To continue, the Endangered Species Act provides that Federal agencies which determine that their projects and programs may affect endangered or threatened species must consult with the Fish and Wildlife Service to resolve any potential conflicts. GAO found that FWS has continually improved the consultation process; however, conflicts involving ongoing and planned projects and programs had not always been identified or resolved promptly. The onerous bureaucracy of the Department of the Interior has again thwarted the attempts and intention of the Congress to serve the best interests of the American people.

Finally, GAO found that further legislative changes to the Endangered Species Act are needed to better balance species protection and economic growth and development. Currently the Endangered Species Act permits the Fish and Wildlife Service to continue to list geographically limited populations of species as endangered or threatened even though they may not be endangered or threatened throughout all or a significant portion of their existing ranges or their overall status are not known. Furthermore, the present act does not make clear whether permanent exemptions are available for all Federal projects and programs. For some projects and programs the lengthy consultation process may have to be initiated and the project stopped each time the affected species is listed and a potential conflict is identified. Currently our Nation is faced with rampant inflation existing side by side with a growing recession. Now is not the time to hinder economic growth and development with poorly drafted and poorly implemented legislation.

It should be noted, Mr. Speaker, that the Committee on Merchant Marine and Fisheries has conducted oversight on the Endangered Species Act using the GAO report as a guide. The chairman of the full committee, Mr. Murphy, and the chairman of the Subcommittee on Fisheries and Wildlife Conservation, Mr. Breaux, have stated that amendments will be offered to correct the deficiencies I have mentioned. I anxiously await those amendments and urge my colleagues to support them.

In conclusion, Mr. Speaker, I would like to reiterate to the Members of this body the high cost of this legislation and the mismanagement of the act by the bureaucracy. Without doubt the Endangered Species Act is a prime candidate for sunset and legislative veto provisions.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana (Mr. Breaux).

Mr. BREAUX. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, just by way of explanation for the members of the committee on this rule, let me say first that I, of course, support the rule.

One might say that the procedures under which this legislation is brought to the floor are somewhat unusual. Considering the time restraints under which the House is acting, I think we handled this in a proper manner.

I would like to point out to the Members of the House that the Endangered Species Act has, of course, had a great deal of controversy in years past. In the last Congress the legislation was reauthorized only for a period of something like 18 months, rather than the normal 3-year authorization period.

When our subcommitte began hearings on the Endangered Species Act this year, we started off with the attitude of having some very detailed oversight hearings on the legislation to see if amendments that had been adopted in the last Congress were working in the manner in which this Congress intended them to work. Of course, with a May 15 deadline, it was impossible for our subcommittee and the full committee to adequately have oversight committee hearings and at the same time meet that deadline.

So we made a commitment to the Members of the House that we would go ahead and report out a normal 3-year reauthorization bill with this legislation and then follow that up with extensive oversight hearings. The amendments that are in order under this rule today are a result of those oversight hearings which were 3 days in length and which I think focused in on some of the real concerns that had previously been expressed by Members of the House, including bringing in the General Accounting Office to present to our committee its findings that had been adopted in the last Congress were working in the manner after an extensive study on the workings of the Endangered Species Act.

These amendments which I will be offering are, I think—and the gentleman from New Jersey (Mr. Forsythe) can speak for this—supported by the ranking minority member of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, and they are also strongly supported by the chairman of the full committee. They, of course, were not voted on by our committee because we had to report out the reauthorization bill prior to the time we were in a position to write the amendments which we are now recommending and which will be offered at an appropriate time when this legislation is brought up.

I think the amendments are good. We needed a waiver of points of order merely because of the fact that they would normally be nongermane in a routine 3-year authorization bill.

Mr. Speaker, this is an open rule. I strongly support the rule, and I urge the Members to support the rule and the legislation.

Mr. **Duncan** of Tennessee. Mr. Speaker, I have not had a chance to read the proposed amendments, but I understand that none of the amendments change in any way the present authorization for projects that are now exempt from the Endangered Species Act. Is that correct?

Mr. **Breaux**. Mr. Speaker, I would assure the gentleman that is correct. I would further assure the gentleman that none of the amendments affect Tellico Dam in Tennessee.

Mr. **Duncan** of Tennessee. Mr. Speaker, I thank the gentleman.

Mr. **Frost**. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The **Speaker** pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. **Mottl**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that quorum is not present.

The **Speaker** pro tempore. Pursuant to clause 4, rule XI and the Chair's prior announcement, further proceedings on this vote will be postponed.

The point of no quorum is considered withdrawn.

The **Speaker** pro tempore. The unfinished business is agreeing to the resolution, House Resolution 417.

The Clerk read the title of the resolution.

The **Speaker** pro tempore. The question is on the resolution.

Mr. **Mottl**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make a point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 320, nays 9, not voting 104, as follows:

[Roll No. 586]

YEAS—320

Abdnor
Akaka
Albosta
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Anthony
Applegate
Archer
Ashbrook
Aspin
Atkinson
Bafalis
Bailey
Baldus
Barnard
Barnes
Bauman
Beard, R.I.
Bedell
Benjamin
Bennett
Bereuter
Bethune
Bevill
Bingham
Blanchard
Boner
Bowen
Brademas
Breaux
Brinkley
Brodhead
Brooks
Broomfield
Broyhill
Buchanan
Burlison
Burton, Phillip
Butler
Byron
Campbell
Carney
Carter
Cavanaugh
Chappell
Clausen
Clinger
Coelho
Coleman
Collins, Tex.
Conte
Corcoran
Corman
Coughlin
Courter
Crane, Daniel
D'Amours
Daniel, Dan
Daniel, R. W.
Danielson
Dannemeyer
Daschle
Davis, Mich.
de la Garza
Deckard
Dellums
Derrick
Derwinski
Dingell
Dixon
Dodd
Donnelly
Dornan
Duncan, Tenn.
Eckhardt
Edwards, Ala.
Edwards, Calif.
Edwards, Okla.
Emery
English
Erdahl
Erlenborn
Ertel
Evans, Del.
Evans, Ga.
Evans, Ind.
Fary
Fascell
Fenwick
Ferraro
Findley
Fisher
Fithian
Foley
Ford, Mich.
Ford, Tenn.
Forsythe
Fountain
Fowler
Frenzel
Frost
Gaydos
Gephardt
Giaimo
Gilman
Gingrich
Ginn
Glickman
Goldwater
Gonzalez
Goodling
Gore
Gradison
Gramm
Grassley
Gray
Green
Grisham
Guarini
Gudger
Guyer
Hall, Ohio
Hall, Tex.
Hamilton
Hammerschmidt
Hance
Hanley
Hansen
Harkin
Harris
Hawkins
Heckler
Heftel
Hightower
Hillis
Hinson
Holt
Hopkins
Howard
Hubbard
Hughes
Hutto
Hyde
Ichord
Jacobs
Jeffords
Jeffries
Jenkins
Jenrette
Johnson, Calif.
Jones, Okla.
Jones, Tenn.
Kastenmeier

YEAS—Continued

Kazen
Kelly
Kemp
Kildee
Kindness
Kramer
LaFalce
Lagomarsino
Latta
Leach, Iowa
Leath, Tex.
Lederer
Lee
Lehman
Leland
Levitas
Lewis
Livingston
Lloyd
Loeffler
Long, La.
Lott
Luken
Lungren
McClory
McCloskey
McCormack
McHugh
McKay
McKinney
Madigan
Maguire
Markey
Marks
Marlenee
Marriott
Martin
Mathis
Matsui
Mattox
Mavroules
Mazzoli
Mica
Mikulski
Miller, Ohio
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Montgomery
Moore
Moorhead, Calif.
Mottl
Murphy, N.Y.
Murphy, Pa.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oberstar
Obey
Ottinger
Panetta
Pashayan
Patten
Patterson
Paul
Pease
Perkins
Petri
Peyser
Preyer
Price
Pursell
Rangel
Ratchford
Regula
Reuss
Rhodes
Rinaldo
Ritter
Robinson
Roe
Rose
Roth
Royer
Rudd
Russo
Sabo
Satterfield
Sawyer
Schroeder
Schulze
Sebelius
Seiberling
Sensenbrenner
Shannon
Sharp
Shelby
Shumway
Shuster
Simon
Skelton
Slack
Smith, Nebr.
Snowe
Snyder
Solarz
Solomon
Spellman
Spence
St Germain
Staggers
Stangeland
Stanton
Stark
Stenholm
Stewart
Stockman
Stokes
Stratton
Stump
Swift
Symms
Synar
Tauke
Taylor
Thomas
Traxler
Trible
Udall
Ullman
Vander Jagt
Vanik
Vento
Volkmer
Walgren
Walker
Wampler
Waxman
Weaver
Weiss
White
Whitehurst
Whitley
Whittaker
Whitten
Williams, Mont.
Wolff
Wolpe
Wright
Wyatt
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Mo.
Zablocki

NAYS—9

Beilenson
Bonior
Bonker
Burton, John
Hollenbeck
Lowry
McDonald
Stack
Studds

NOT VOTING—104

Abbaddo
Alexander
Anderson, Ill.
Ashley
AuCoin
Badham
Beard, Tenn.
Biaggi
Boggs
Bolling
Bouquard
Brown, Calif.
Brown, Ohio
Burgener
Carr
Cheney
Chisholm
Clay
Cleveland
Collins, Ill.
Conable
Conyers
Cotter
Crane, Philip
Davis, S. C.
Devine
Dicks
Dickinson
Diggs
Dougherty
Downey
Drinan
Duncan, Oreg.
Early
Edgar
Fazio
Fish
Flippo
Flood
Florio
Fuqua
Garcia
Gibbons
Hagedorn
Harsha
Hefner
Holland
Holtzman
Horton
Huckaby
Ireland
Johnson, Colo.
Jones, N.C.
Kogovsek
Kostmayer
Leach, La.
Lent
Long, Md.
Lujan
Lundine
McDade
McEwen
Michel
Miller, Calif.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Murphy, Ill.
Nedzi
Nolan
Oakar
Pepper
Pickle
Pritchard
Quayle
Quillen
Rahall
Railsback
Richmond
Roberts
Rodino
Rosenthal
Rostenkowski
Rousselot
Roybal
Runnels
Santini
Scheuer
Smith, Iowa
Steed
Thompson
Treen
Van Deerlin
Watkins
Williams, Ohio
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Young, Fla.
Zeferetti

The Clerk announced the following pairs:

Mr. Addabbo with Mr. Winn.
Mr. Fazio with Mr. Young of Florida.
Mr. Garcia with Mr. Horton.
Mr. Long of Maryland with Mr. McDade.
Mr. Moffett with Mr. Pritchard.
Mr. Charles H. Wilson of California with Mr. Quayle.
Mr. Van Deerlin with Mr. Railsback.
Mr. Thompson with Mr. Williams of Ohio.
Mr. Steed with Mr. Rousselot.
Mr. Pepper with Mr. Bob Wilson.
Mr. Rodino with Mr. Fish.
Mr. Watkins with Mr. Harsha.
Mr. Rostenkowski with Mr. Burgener.
Mr. Santini with Mr. Devine.
Mr. Flippo with Mr. Beard of Tennessee.
Mr. Early with Mr. Anderson of Illinois.
Mr. Downey with Mr. Badham.
Mr. Roybal with Mr. Brown of Ohio.
Mr. Zeferetti with Mr. Lent.
Mr. Charles Wilson of Texas with Mr. Quillen.
Mr. Moakley with Mr. Lujan.
Mr. Kostmayer with Mr. Dickinson.
Ms. Holtzman with Mr. McEwen.
Mr. Kogovsek with Mr. Hagedorn.
Mr. Gibbons with Mr. Conable.

Mr. Hefner with Mr. Dougherty.
Mr. Lundine with Mr. Cheney.
Mr. Miller of California with Mr. Roberts.
Mr. Ireland with Mr. Cleveland.
Mr. Jones of North Carolina with Mr. Pickle.
Mr. Holland with Mr. Philip M. Crane.
Mr. Dicks with Mr. Rahall.
Mr. Drinan with Mr. Rosenthal.
Mrs. Collins of Illinois with Mr. Richmond.
Mr. Carr with Ms. Oakar.
Mrs. Bouquard with Mr. Noland.
Mrs. Boggs with Mr. Florio.
Mr. Cotter with Mr. Davis of South Carolina.
Mr. Boland with Mr. Edgar.
Mr. Huckaby with Mr. Fuqua.
Mr. Clay with Mr. Duncan of Oregon.
Mrs. Chisholm with Mr. Brown of California.
Mr. Biaggi with Mr. AuCoin.
Mr. Ashley with Mr. Alexander.
Mr. Conyers with Mr. Mollohan.
Mr. Moorhead of Pennsylvania with Mr. Scheuer.
Mr. Nedzi with Mr. Wirth.
Mr. Murphy of Illinois with Mr. Smith of Iowa.

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PROPOSED AMENDMENT BY MR. BREAUX TO THE AMENDMENT TO H.R. 2218 OFFERED BY MR. BREAUX

H.R. 2218

By Mr. BREAUX:

(Amendment to the amendment to H.R. 2218 offered by Mr. Breaux.)

—Page 7, strike out line 12 and all that follows down through and including line 24 on page 11, and insert the following:

"CONVENTION IMPLICATION

"SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

"(d) ENDANGERED SPECIES SCIENTIFIC AUTHORITY COMMISSION.—(1) There is hereby established within the U.S. Fish and Wildlife Service the Endangered Species Scientific Authority Commission (hereinafter in this section referred to as the 'Commission').

"(2) The Commission shall be composed of scientifically qualified agency representatives. Each of the following shall designate one such representative from his agency:

"(A) The Secretary of the Interior, whose representative shall be the Chairman.

"(B) The Secretary of Agriculture.

"(C) The Secretary of Commerce.

"(D) The Secretary of Health, Education, and Welfare.

"(E) The Director of the National Science Foundation.

"(F) The Chairman of the Council on Environmental Quality.

"(G) The Secretary of the Smithsonian Institution is invited to designate a representative.

"(3) The Commission shall make recommendations to the Director of the U.S. Fish and Wildlife Service on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention.

"(4) In the discharge of its responsibilities, the Commission shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the governmental and nongovernmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

"(5) The Secretary shall designate an Executive Secretary for the Commission, and shall provide the necessary staff and administrative support for the Commission.

[From the Congressional Record, Oct. 22, 1979]

HOUSE CONSIDERATION OF H.R. 2218

ENDANGERED SPECIES ACT AUTHORIZATIONS

Mr. BOWEN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. Bowen).

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2218, with Mr. Fascell, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The **CHAIRMAN** pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Mississippi (Mr. Bowen) will be recognized for 30 minutes, and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. Bowen).

Mr. BOWEN. Mr. Chairman, I rise in support of H.R. 2218. This bill authorizes appropriations to carry out the Endangered Species Act through fiscal year 1982. The bill authorizes $25.6 million to the Department of the Interior and $3 million to the Department of Commerce in each of the next 3 years. This authorization level is identical to that approved last year.

The Endangered Species Act has just completed a difficult 3 years, The act has been subjected to considerable disrepute since the January 1977 decision of the Sixth Circuit Court of Appeals in the snail darter case. To some extent the act warranted the public attention that it received. As originally constructed, the act was inflexible—it did not adequately provide for a mechanism to balance economic and environmental interests.

The 1978 Amendments to the Endangered Species Act changed all of this, however. The 1978 amendments significantly altered the structure of the act by establishing a procedure to balance the interest in conserving endangered species against other legitimate national concerns. The amendments created a seven-member committee, composed of Federal and State representatives, to resolve conflicts between endangered species and development activities. The membership of this committee was carefully balanced to insure that both environmental and developmental concerns are adequately represented. The committee includes the Secretary of Army, the Secretary of Agriculture, the Chairman of the Council of Economic Advisers, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, the Administrator of the National Oceanic and Atmospheric Administration, and a representative of the Governor of the affected State.

To date this committee has considered two exemption applications. Their record is one and one. It granted an exemption to the Grayrocks Reservoir project in Wyoming which will provide cooling water to a coal-fired electric generating facility, and it voted unanimously to deny an exemption for the Tellico project in Tennessee. Both Houses of Congress, however, recently passed an amendment to the water appropriations bill which essentially negates the decision of the committee in the case of Tellico. A third application is currently proceeding through the exemption process.

All of the evidence thus far indicates that the exemption process is working—that it does insure that economic and environmental concerns are adequately balanced under the Endangered Species Act. I am committed to following the implementation of the 1978 amendments closely to insure that they do work. If further modifications in the act are necessary, we will propose them to the House.

I should point out that in most instances of conflict between an endangered species and some development activity a solution can be developed without ever resorting to the exemption process. The conclusive evidence developed during the course of our oversight hearings this year and last year indicates that the vast majority of the conflicts have been successfully resolved in the consultation process. The consultation process simply involves formal and informal discussions between the developing agency and the wildlife agency to moderate or eliminate the adverse effects of the project.

In some cases minor adjustments to the project can avoid the adverse impact, in other instances, the combination of transplant efforts and active conservation measures effectively eliminates any danger to the species.

Despite the success of the consultation process thus far, we know that it cannot succeed in resolving all problems. That is why the creation of a "safety valve" in the act through the exemption process was such an important addition to the statute.

The 1978 amendments accomplished much more, however, than just creating a safety valve in the act. The amendments also required a number of other important changes in the endangered species program which are designed to insure that the program is run in the manner that Congress intended. The act now requires the preparation of economic impact statements on proposed critical habitat designations, the regular review of the status of all species on the list, and improved notice to all individuals and communities potentially affected by a proposed listing.

Congress has taken a long, hard, and sometime painful look at the Endangered Species Act. The Subcommittee on Fisheries and Wildlife Conservation and the Environment conducted 8 days of oversight hearings on the act last year.

We held 3 more days of hearings this year. The General Accounting Office investigated the operation of the endangered species program. The committee has evaluated the GAO report. In short, the administration of the endangered species program has been analyzed in excruciating detail. I daresay that the endangered species program has received more scrutiny over the last 3 years than any other Federal program.

There have been problems. We are all aware of them. The General Accounting Office has documented some serious management deficiencies. The failure to prioritize listing and recovery actions, inadequate attention to delisting or reclassifying species, and the failure to utilize the best scientific evidence available. I believe that the Department of the Interior has already made real progress in addressing these deficiencies. The amendments that I intend to offer to the bill will make sure that the Department does correct those portions of the program criticized by the GAO.

All of the Members of the House are painfully aware of the so-called failures of the Endangered Species Act—the seemingly never-ending conflict between the snail darter and the Tellico Dam. What most Members are not aware of are the successes of the program.

The endangered species program is barely 10 years old. And yet in that time this country has made real progress toward reversing the alarming rate of species extinction in this country and around the world. The American alligator in my district probably typifies better than any other example, the real environmental and yes, economic value of the Endangered Species Act.

The American alligator was listed as an endangered species several years ago. Frankly, it was listed because no one governmental entity had paid sufficient attention to the species to insure that the populations did not suffer from overutilization and loss of habitat. Before long, the alligator, which is a considerable economic resource in parts of my district, began to be reduced to low levels.

The State of Louisiana recognized what was happening to the alligator and supported placing the alligator on the list. That action, combined with a sophisticated recovery program conducted by the State of Louisiana, has brought the alligator back to a point where it is no longer not only endangered—it is not even threatened in many portions of its range.

The State and the Department now predict that there may be as many as 1 million alligators in the Southeastern United States. There are so many alligators in my district that we have considered registering them to vote.

Now alligators may not be a particularly lovely creature but they do play an important role in the ecology of the Louisiana marsh. Aside from man himself, alligators are the top predator in the marsh. More importantly, alligators are an important economic resource in parts of my district. Assuming we can convince the Federal Government to allow us to export alligator hides, trappers in my district will be able to receive $20 per foot for top quality alligator hides. These alligators will be harvested under one of the most stringently regulated wildlife conservation programs in the country. These regulations will insure that the alligator population remain at very high levels.

I have gone on at length about the American alligator to emphasize the positive side of the Endangered Species Act. There is a very real and legitimate need for this program. There is a continuing problem of a loss of habitat for wildlife in this country. The Endangered Species Act attempts to slow this loss or at least moderate it.

As I have indicated, I have an amendment which I intend to offer to H.R. 2218. This amendment proposes a number of technical and clarifying amendments to the bill to resolve some of the concerns raised by the General Accounting Office and others since the enactment of the 1978 amendments.

The most significant portion of this amendment is intended to restore some semblance of order and accountability to U.S. trade policy in endangered and threatened wildlife. There is no order and accountability under the existing legal framework.

My amendment addresses an issue entirely separate and apart from the domestic controversies, such as Tellico Dam. The amendment is necessary because the system for carrying out our obligations under the Convention on International Trade in Endangered Flora and Fauna has completely broken down and needs to be restored to working order. The situation is so acute that earlier this year the two Government agencies responsible for implementing the Endangered Species Convention published mutually exclusive and contradictory regulations.

My amendment simply makes the agency which is partly responsible for carrying out obligations under the convention accountable to the Secretary of the Interior. This agency, the Endangered Species Scientific Authority, is currently composed of representatives of seven different agencies. They are accountable to no one—not even the President. In fact, the agency representatives are not even accountable to the agency that they have been presumably appointed to represent.

Some of the Members may have heard allegations that the Breaux amendment abolishes the Scientific Authority, or violates the Endangered Species Convention. Nothing could be more false. I intend to describe this amendment in more detail at the time that it is offered.

The Endangered Species Act is a good, sound conservation program. The act needed amendments last year to make it more flexible and reasonable. It is now time to give the 1978 amendments a chance to work. I urge your support for the authorization of appropriations for this program.

Mr. FORSYTHE. Mr. Chairman, with the adoption of the Endangered Species Act of 1973, this Nation embarked upon a national policy of conserving and restoring those species of fish and wildlife which have moved to the brink of extinction. Since the enactment of this legislation, 199 species of U.S. Wildlife and 467 foreign species have been listed as endangered. The act requires that the Secretary of the Interior or the Secretary of Commerce, as appropriate, establish a program to insure the recovery of listed species and, therefore, their eventual removal from the endangered list.

Since 1973, considerable progress has been made in protecting threatened and endangered species. In 1973, there were 49 whooping cranes in the wild—there are now 84. In the same period the Aleutian Canada Goose population has increased from 700 to 1,500. The populations of many species which were declining, such as the bald eagle and the peregrine falcon, have now been stabilized.

We have also had a number of disappointments. Despite the best efforts of the Federal agencies involved and of the concerned public, the California condor population continues its slow decline, decreasing from 40 in 1973 to less than 30 today. The red wolf is now probably extinct in the wild, although initial experiments at reintroduction have given some reason for optimism.

In the last few years, substantial questions have been raised regarding the need to balance endangered species conservation with man's demands for increased food, energy, and housing. These concerns led to the passage, in 1978, of a series of amendments which established an Endangered Species Committee to resolve conflicts which arise when a proposed project threatens the habitat or the continued existence of an endangered species.

In the last year, however, we have found several problems associated with the way the 1978 amendments are working. For example, the rights of a permit or license applicant to seek an exemption under the act are not fully protected under the 1978 amendments. There is some confusion in the legislative history as to whether a project exemption is permanent when newly listed species are found in the project area. Also, the emergency rulemaking period is too short to permit compliance with the act's procedural safeguards in the listing of species. To remedy these and other issues, Chairman Breaux will be offering a series of amendments.

The legislation before you today provides funds to the Department of Commerce and the Department of the Interior for their endangered species conservation program and to the Endangered Species Committee. Because of the progress which had been made in the conservation of endangered species and the balance which has been, and which will be, introduced into the act, I urge the adoption of H.R. 2218 with the amendments which will be offered by the chairman of the subcommittee.

Mr. Breaux. Mr. Chairman, the Endangered Species Act we bring to the floor today is a result of 3 days of extensive oversight given in this Congress to determine whether the Endangered Species Act was operating in the manner and under the way in which this Congress intended it to. As the previous speakers have indicated, we made extensive changes to the Endangered Species Act in the last Congress. This committee felt that the first thing we should do in this Congress was to pay particular attention to determine whether the bill and the amendments we passed in the last Congress were operating in the proper manner.

As a result, we reported a bill out of our committee, both the subcommittee and the full committee, as a straight reauthorization bill for 3 years. We then followed that report out with 3 days of oversight hearings, bringing in the General Accounting Office, bringing in others who had particular expertise in the Endangered Species Act. They pointed out some defects in the Endangered Species Act, and as a result of those hearings the committee felt that it was proper that we should make what I would call minor and technical changes.

As the gentleman from New Jersey (Mr. Forsythe) indicated, I will be offering on the floor a series of amendments en bloc which we feel do address the defects that were pointed out as a result of our oversight hearings.

One of the amendments in particular is a little more controversial than the others, but I think that we have struck a balance and reached a compromise with all of those who are concerned about the matter in which the endangered species scientific authority was operating. I think it is a good and a balanced amendment. Basically that amendment brings the scientific authority in the Department of the Interior as is the imagined authority in the Endangered Species Act.

We felt as a committee—I feel as chairman of the subcommittee in particular—that that type of operation is absolutely essential and correct because we found after our oversight hearings the scientific authority really was responsible and answerable to no one within our government. It was not in the Department of the Interior; it was not in the executive branch; it was not under the authority of Congress. It was out by itself in a manner in which no other agency in our government is operating. This amendment, along with others, will bring the scientific authority under the Department of the Interior and allow the Department of the Interior to supervise its actions while at the same time preserving the integrity of the scientific authority and allowing them to do the job that they are guaranteed to do under the Endangered Species International Covenants, to which the United States is a signatory. It gives them no more authority nor any less authority than they receive under the International Treaty on Endangered Species.

Mr. Chairman, I think that this is a balanced bill. I think we have addressed the concerns of some of the Members of Congress who have appeared before our committee who spoke very eloquently on the matter, in which they thought we could improve on the 1979 act. I think this bill is that product and merits the support of all of our colleagues.

Mr. Chairman, I reserve the remainder of my time.

Mr. **Solomon**. Mr. Chairman, I want to commend and concur in the remarks of the gentleman from Louisiana (Mr. Breaux) and the gentleman from New Jersey (Mr. Forsythe), but I would also like to point out, Mr. Chairman, that there may be another endangered species that we might consider adding to this list. I spoke earlier in this morning's session about rampant inflation which is breaking the backs of the American people, inflation caused by irresponsible spending by the U.S. Congress. Maybe the time has come when we ought to consider the human animal as an endangered species and particularly those human animals that are known as the American taxpayers. Every year there are more and more people who, in one form or another, are financially dependent on the Federal Government, while at the same time the number of taxpayers is becoming less and less. Perhaps if we added the "American taxpayer" to the endangered species list, it might make the Congress just a little more fiscally responsible when spending the taxpayers' money.

Mr. **Oberstar**. Mr. Chairman, I commend our chairman for his splendid work, devoting countless hours to the hearings in great depth which this committee has held both in the 95th Congress and in the 96th Congress, exploring all of the many complicated aspects of the Endangered Species Act. I believe that this legislation should be supported because this committee has acted responsibly last year and again this year in curing some of the defects of the Endangered Species Act which resulted in apparently irreconcilable controversies over the years. We now have a mechanism in place by which controversy can be resolved early in the process of developing our major water resources and other public works projects. That is a monumental advance. It will preserve the integrity of the Endangered Species Act. It will help preserve the species to which this legislation is committed, to preserve those whose existence is endangered by a change in habitat brought about by the Nation's economic advance. The legislation that we have authored in this bill will continue the Endangered Species Act for another 3 years, thereby keeping it under constant control of the Congress, under the watchful eye of the committees charged with the responsibility for this legislation. It is a responsible way to approach this matter. There is now a forum for the Endangered Species Act, a forum for the resolution of conflict, which has not been available in the past. It will preserve the future of those wildlife whose very existence has been threatened, some of which have come close to extinction; and it will also make it possible for the Congress, for the Department of the Interior and other agencies of government to address themselves in a responsible fashion to the basic human, socioeconomic needs of this country. I urge the passage of this legislation.

Mr. FORSYTHE. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

Mr. BREAUX. I would just like as a final comment to commend and thank the chairman of the full Committee on Merchant Marine and Fisheries, the gentleman from New York (Mr. Murphy), for his work and cooperation and assistance to the subcommittee as we moved forward with our oversight hearings and reporting this bill to the floor.

Mr. MURPHY of New York. Mr. Chairman, H.R. 2218 would authorize appropriations to carry out the Endangered Species Act through fiscal year 1982. The bill authorizes $28.6 million per year to the Department of the Interior and Commerce over the next 3 fiscal years to operate the endangered species program.

The endangered species program has been enveloped in controversy over the recent past. We believe that a large part of that controversy is now behind us. Last year the Merchant Marine and Fisheries Committee drafted an amendment to the act which added much-needed flexibility to the statute. Under these amendments any project can be considered for an exemption from the requirements of the act by a seven-member committee. This committee is composed of representatives of several Federal agencies as well as a representative of the State involved. The membership of this committee has been carefully balanced to represent both environmental and developmental concerns.

Although the 1978 amendments were developed after extensive hearings and markup sessions in the Merchant Marine and Fisheries Committee, several Members of the House expressed concerns last year that the House be given an opportunity to review the Endangered Species Act again in the 96th Congress after the General Accounting Office completed their review of the administration of the act.

We have kept the pledge that we made to these members and the House last year. The General Accounting Office report has been completed and oversight hearings on that report have been conducted. The Department of the Interior has initiated steps to correct nearly all of the deficiencies cited by the GAO report.

The GAO and the administration have also suggested several legislative changes to clarify some of the provisions in the 1978 amendments. We have developed several amendments incorporating many of these suggestions.

We believe that the amendments adopted last year are working. The committee is following their implementation closely to make sure that they do work. The amendments addressed the chief deficiency of the act—the absence of any mechanism to balance the legitimate interest in conserving endangered species and the equally important national interest in continued economic growth.

As I have indicated, the 1978 amendments addressed this problem by the creation of a special high-level committee to resolve disputes when they do occur. The amendments did several other important things as well.

The 1978 amendments, for the first time, require the consideration of the economic impact of designating critical habitat. This represents a significant change in the statute, and is aimed at informing local communities of the potential impact of a critical habitat designation.

The 1978 amendments also required several important changes in the notice procedures in the act. The committee discovered last year that all too often the listing of endangered species occurred in a regulatory vacuum. Regulatory proposals were published in the Federal Register and seldom anywhere else. Obviously, notice in the Federal Register does not constitute sufficient notice to individuals and communities that could be potentially impacted by an endangered species listing.

The 1978 amendments addressed this problem by requiring actual notice of critical habitat proposals to units of local government as well as publication in the local newspapers. The amendments also mandate public meetings in the local area on proposals to designate critical habitat.

We believe that all of these changes will serve to provide more local input into the endangered species decisionmaking process. We also believe that these changes will also enhance better understanding of the endangered species program throughout the country. Although the conflicts that have developed under the program are well known and have been widely publicized, these conflicts represent the exception rather than the rule. The undisputed evidence presented to the committee in our oversight hearings suggests that the vast majority of endangered species conflicts can be effectively resolved in the consultation process—without resorting to the courts or to the newly created exemption process. As this fact becomes more understood and acknowledged the fear of the endangered species program will diminish.

The Endangered Species Act is good, sound, and very necessary environmental legislation. I do not believe that any of us here would like to see the bald eagle, the grizzly bear, or the gray wolf vanish. The Endangered Species Act is, in many instances, the only thing that stands between many of these species and extinction. Obviously, the act as originally written failed to recognize that all too often this Nation is forced to make difficult choices—and the survival of endangered species is one of those difficult choices that has to be made. The amendments adopted last year kept the basic strength and structure of the act, but established a system within which the difficult conflict between habitat preservation and development can be resolved.

Mr. **Beard** of Tennessee. Mr. Chairman, I rise in support of the entire package of committee amendments, and wish to compliment the subcommittee chairman, Mr. Breaux, for the close attention to detail in these particular amendments.

On balance, I feel that the Congress passed reasonable, workable amendments to the act last year. It is, of course, too early to determine whether the exemption procedures of the Endangered Species Committee will operate as the Congress intended. However, other changes in the 1978 amendments are certainly improvements. These include increased public participation in the listing process, the consideration of economic impact in determination of critical habitat, and the performance of biological assessments prior to new construction starts.

From my point of view, with the addition of a few changes to the act, as proposed by the committee, I think we can all afford to allow the endangered species program to operate for a few more years before we would need to consider any further amendments.

As Members of the House will recall, one of my amendments adopted last year called for an 18-month reauthorization of the act, so that the Congress would be assured an opportunity to examine a then-promised General Accounting Office report on the endangered species program before passing a 3-year reauthorization.

As GAO witnesses pointed out in recent hearings before Mr. Breaux's subcommittee, the Fish and Wildlife Service's administration of the act has left substantial room for improvement. Recently, after examining the GAO report myself, I introduced H.R. 4841, a bill which I think would correct most of the problems addressed by GAO.

Virtually all of this bill is contained within the committee amendments to this reauthorization.

Those provisions of my bill which were adopted by the committee include, first, instructions to the Secretary to establish procedures to insure efficient and effective management of resources available for administration of the act. GAO found that the Fish and Wildlife Service had never developed guidelines to insure that the most basic of functions are carried out. For instance, GAO found that the Service had received 154 petitions to list or delist species, through June 30, 1978. Yet, only 59 percent of these had ever been recorded as received. The New Melones cave harvestmen listing petition was one of those apparently not logged in as "received." The Service told GAO they did not want to act on this petition, for fear of creating another "Tellico incident." The development of guidelines would correct this situation, as well as insure that the Service develops specific criteria for judging the "substantiality" of petitions to list or delist species.

Guidelines would also be created for a priority ranking system to insure that species facing a high degree of threat receive expeditious review for listing. The Service recognizes the need for a priority system to select species for review and listing, and to allocate its limited staff and funds. In spite of this awareness, the Service has developed six priority systems through fiscal year 1978, but Service officials were not able to agree until recently on implementation of any particular system.

A priority system for the development and implementation of recovery plans is also needed. Service funds have not been allocated toward recovery of species based on the degree of threat to the species. There are numerous instances where the Service has purchased land for recovery of low priority species. Furthermore, the Service cannot determine the effectiveness of recovery plans because they are not adequately monitored or evaluated. The Service recently announced the approval of a revised set of guidelines, which includes a priority system. I understand the Service has also implemented systems for ranking priorities of species for listing and logging petitions. However, I believe that the Congress should mandate these systems under law, to insure that the operation continues.

The second major concern that I had was over clarifying the intent of my "one-time permanent exemption" amendment, which the Congress adopted last year. My intent in offering the amendment was to insure that once a project has undergone a biological assessment and has received an exemption, it would be impossible to halt the project by finding any additional "endangered species."

I think that everyone would agree that projects begun before enactment of the 1978 amendments should be eligible for permanent exemptions if biological assessments are done first. However, opinions differ over what constitutes a "one-time permanent exemption." My intent was to apply the permanent exemption to the project in question. The Senate, on the other hand, in its reauthorization this year has chosen to apply the exemption to individual listed species that are in conflict with a project. Frankly, I think that the Senate's interpretation is illogical. Under the 1978 amendments, projects receive exemptions. There is no process for exempting species from anything.

I think that the amendment adopted by the committee this year with regard to the "one-time permanent exemption" issue serves to provide additional assurances both to developers and environmentalists, although I do not feel that the committee goes far enough in this area. Any exemption for completion of a project would be based upon a biological assessment which would include listed and proposed species, alike.

Environmentalists would be assured that exemptions are granted only after the most thorough of biological assessments is completed, and that all listed or proposed endangered life forms are considered in the exemption process. On the other hand, project managers should be assured that once a project goes through the exemption process, it could not be halted by future listing under the Endangered Species Act. Although the committee does not go this far, the committee amendment should serve to minimize the potential for conflict, to the extent that biological assessments are conducted in a thorough fashion before any exemptions are granted.

Finally, I had expressed concern during the committee's reauthorization hearings that a Senate reauthorization provision that extends the Secretary's "emergency listing" authority from 120 days, under present law, to 1 year is unnecessary and presents potential for further abuse of this law. Fish and Wildlife Service officials have testified that they intend to use this provision extensively in the future. Therefore, I believe that we should approach this issue with caution. The Senate's position on this is not well founded, and I would hope that the House conferees will take these observations into serious consideration during the conference.

Mr. Chairman, because of the high degree of controversy surrounding last year's debate, I believe that continued congressional oversight, and the adoption of the committee's amendments to perfect the act will serve to protect it.

Mr. **Breaux**. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore, Mr. Zablocki, having assumed the chair, Mr. Flippo, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, had come to no resolution thereon.

[From the Congressional Record, Oct. 25, 1979]

STATEMENT OF MR. YOUNG IN SUPPORT OF HIS PROPOSED AMENDMENT TO H.R. 2218, OCTOBER 24, 1979

ENDANGERED SPECIES ACT AUTHORIZATION

Mr. **Young** of Alaska. Mr. Chairman, the amendment that I am offering today will remove from the definition of "fish and wildlife" under the Endangered Species Act all invertebrate animals, such as snails, insects, spiders, clams, et cetera. This will conform the act with the original intent of Congress.

I first entered the Congress when the Endangered Species Act was being debated. At that time, our goals were clear, to prevent extinction of those birds and animals which were truly endangered by man's activities. The intent was not to save every last beetle and butterfly on Earth that was disappearing through natural processes of evolution; and it certainly was not our intent to call a halt to every activity in which man could engage.

Unfortunately, the interpretation of this act by well-meaning but misguided individuals has come to the point where man may be endangered if the act is fully enforced. In fact, as I look at the list of criteria for determining endangerment, I note that Alaskans meet 3 of the 5: our range is curtailed, we suffer under inadequate regulatory mechanisms, and other manmade factors affect our continued existence. Perhaps this Congress will agree to declare Alaska as critical habitat and get the Federal Government off our backs.

Finally, in Hawaii, the cave wolf spider is found only in one cave, which is listed as a civil defense shelter. If the shelter is ever needed, anyone who takes refuge there will be violating the Endangered Species Act.

Mr. Chairman, I could continue this for quite some time but I think I have made my point. The United States is in trouble, partially due to natural causes but mostly due to our own stupidity and short-sightedness. Our country needs energy and it needs transportation if we are to survive. We cannot continue to regulate and preserve ourselves out of existence. We can have a clean environment, a healthy, balanced population of fish and wildlife and plants, and still produce enough energy and enough minerals to keep us going. All I am saying is: give us a chance to do so. Do not hamper us with laws and regulations that prevent us from continuing our lives. My amendment may not be the best solution, but it is a start.

In regard to my amendment, however, let me point out some of the problems that have been caused by invertebrates alone:

On the Duck River in Tennessee, completion of the Colombia dam was halted due to the listing of seven species of mussels, including the Cumberland monkeyface and the tan riffleshell. Only after the hard work of our colleague from that State—Robin Beard—did the Fish and Wildlife Service examine the area and discover that the mussels involved had been extinct in the Duck River for many years, thus allowing the dam to be finished.

On the Little Tennessee River, we are all aware of the conflict between Tellico dam and the snail darter. However, even if the snail darter did not exist, the project still would have been halted by the Anthony's river snail.

In Florida, the Florida tree snail threatens construction of a needed airport. In California, the El Segundo blue butterfly is hampering expansion of the Los Angeles jetport.

Again in California, the New Melones dam was halted by the discovery of the cave harvestman spider. Only after further searches found other healthy populations was the dam completed.

At this time, Mr. Chairman, I would like to request that the chairman of the subcommittee, who has done so well on this bill, engage in a little colloquy with me.

Mr. Chairman, my main intent in offering this amendment is to make sure that those who enforce the Endangered Species Act do not enforce it to the detriment of people but that they enforce the act as it was intended by Congress.

If the gentleman wishes to ask me any questions, I would be glad to answer them.

Mr. BREAUX. Mr. Chairman, if the gentleman will yield, I appreciate the gentleman's purpose in offering the amendment, and I thank him for his comments and for making his suggestions.

As the gentleman full well knows, we did make some changes last year in the 1978 amendments which prohibited the listing of endangered species individually, and now we have to look at them as a whole class of invertebrates.

We cannot pick out one and say, "Now, this particular invertebrate species is going to be in the endangered species classification," but we have now to look at the whole class of the species that fall in that category and make that determination.

I know the gentleman is trying to come up with a reasonable approach. I just want to say to the gentleman that the committee has not had an opportunity to hold hearings or to look into any of the problems we are having with invertebrate species.

Mr. Chairman, if the gentleman will yield further, I am very hesitant to support his amendment, and I will have to say that I oppose the gentleman's amendment.

There are some invertebrates that are very important, some that we want to protect. We want to be able to say that they are in the endangered species classification, and I can think of several, including shrimp species, mollusks, and some crustaceans in the invertebrates class. They are invertebrates, but yet they are very important to our food cycle, and there are some that should be in the category of species to be protected.

Mr. YOUNG of Alaska. Mr. Chairman, it is my understanding, under the bill as proposed by the gentleman and the committee, that if there is any action concerning invertebrates that does not make real sense, we still have oversight privileges under the bill as members of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, of which the gentleman is chairman?

Mr. BREAUX. Mr. Chairman, the gentleman from Alaska is absolutely correct. If we find during the course of the next 3-year authorization under this bill that they are not following the law as Congress intended, I give the gentleman from Alaska my commitment—and I know the gentleman from New York does also—that we will proceed very aggressively, as we have in the last Congress, to have oversight hearings and allow anyone to come in and say that this is not what Congress intended. We pledge that to the gentleman from Alaska.

[From the Congressional Record, Oct. 24, 1979]

HOUSE CONSIDERATION AND PASSAGE OF H.R. 2218

ENDANGERED SPECIES ACT AUTHORIZATIONS

Mr. MURPHY of New York. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. Murphy).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2218, with Mr. Flippo in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on Monday, October 22, 1979, all time for general debate on the bill had expired.

The Clerk will read.

The Clerk read as follows:

H.R. 2218

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 7(q) of the Endangered Species Act of 1973 (16 U.S.C. 1536(q)) is amended to read as follows: "There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982.".

SEC. 2. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for fiscal year 1979, and not to exceed $25,000,000 for each fiscal years 1980, 1981, and 1982, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $2,500,000 for fiscal year 1979, and not to exceed $3,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 3. Subsection (f) of section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.".

Mr. MURPHY of New York (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the Record and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. In lieu of the amendment recommended by the Committee on Merchant Marine and Fisheries now printed in the bill, it shall be in order to consider an amendment printed in the Congressional Record of September 20, 1979, by Representative Breaux.

The Clerk will report the amendment.

The Clerk read the amendment made in order under the rule, as follows:

Page 3, after line 2 insert the following:

SEC. 3. Section 3(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (11) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a)(2).".

SEC. 4. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (f)(2)(B)(i) to read as follows:

"(i) not less than 60 days before the effective date of the regulation, publish—

"(I) the text of the proposed regulation in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text) in a newspaper of general circulation within or adjacent to such habitat;";

(2) by amending subsection (f) (2) (C) (ii)—

(A) by *striking out* "subsection (b)(A), (B), and 'C)" and inserting in lieu thereof "subsection (b) (1) (A), (B), and (C)",

(B) by striking out "120-day period" each place it appears therein and inserting in lieu thereof "225-day period", and

(C) by inserting at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."; and

(3) by adding at the end thereof the following new subsection:

"(h) Guidelines and Procedures.—The Secretary shall develop and implement guidelines and procedures to ensure that the purposes of this section are achieved efficiently and effectively. Such guidelines and procedures shall include, but are not limited to—

"(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c) (2) of this section;

"(2) criteria for making the findings required under such subsection with respect to petitions;

"(3) a ranking system to ensure that species facing a high degree of threat receive priority review for listing; and

"(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section.".

Sec. 5. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is further amended—

(1) by amending subsection (a)—

(A) by striking out "(a) Consultation.—" and inserting in lieu thereof "(a) Federal Agency Actions and Consultations.—(1)";

(B) by striking out the third sentence thereof; and

(C) by adding at the end thereof the following:

"(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

"(3) For the purposes of paragraph (2) the term 'endangered species and threatened species' includes every species of fish or wildlife or plant that is listed under section 4; except that paragraph (2) shall cease to apply for purposes of an agency action to any species so proposed for listing unless, within 90 days after consultation regarding the agency action is concluded, the Secretary publishes in the Federal Register a final regulation listing such species.";

(2) by amending each of subsections (b), (c), (d), (e) (2), (f), (g) (1) and (5), (h) (1), and (m) by striking out "subsection (a)" wherever it appears therein and inserting in lieu thereof "subsection (a) (2)".

(3) by further amending subsection (c)—

(A) by inserting "(1)" immediately after "BIOLOGICAL ASSESSMENT.—", and

(B) by adding at the end thereof the following new paragraph:

"(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in consultation with the Secretary and under the supervision of the appropriate Federal agency.";

(4) by further amending subsection (g) (1) by striking out "may jeopardize" and all that follows thereafter in the first sentence thereof and inserting in lieu thereof "would violate subsection (a) (2).";

(5) by amending subsection (g) (2) (A) by striking out "process." and inserting in lieu thereof "process; or, in the case of an agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of title 5, United States Code, with respect to the issuance of the permit or license.";

(6) by amending subsection (g)(3) by redesignating subparagraph (B) as subparagraph (C), and by inserting immediately after subparagraph (A) the following new subparagraph:

"(B) If more than one application for exemption is filed for the same agency action, the same review board shall be convened for each application and shall consider each such application in the manner set forth in paragraph (5).";

(7) by amending subsection (g)(5)—

(A) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively,

(B) by striking out "such exemption applicant" in clause (B) (as so redesignated) and inserting in lieu thereof "the Federal agency or exemption applicant, as the case may be", and

(C) by redesignating subclauses (A), (B), and (C) as subclauses (i), (ii), and (iii), respectively; and

(8) by amending subsection (h)—

(A) by amending paragraph (2)(A) to read as follows:

"(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute, but only if a biolgogical assessment has been conducted under subsection (c) with respect to such agency action, a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action, regardless whether the species was identified in the biological assessment."; and

(B) by amending the first sentence of paragraph (2)(B) to read as follows: "An exemption shall not be permanent under subparagraph (A) if the Secretary finds, on the basis of the best scientific and commercial data available to him, that the exemption will result in the extinction of a species that was not the subject of the consultation under subsection (a)(2) relating to the agency action concerned and was not identified in any biological assessment that was prepared under subsection (c) before, or in conjunction with, the Committee consideration relating to the exemption.".

SEC. 6. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended—

(1) by striking out subsection (e) of section 8;

(2) by adding immediately after section 8 the following new section:

"CONVENTION IMPLEMENTATION

"SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—For purposes of the Convention, the Management Authority shall carry out, but is not limited to carrying out, the following functions:

"(1) Issue permits and certificates as required by the Convention.

"(2) Apply to each permit or certificate that authorizes the importation, exportation, or introduction from the sea of a specimen of any species included in Appendix I of the Convention appropriate conditions and restrictions so that—

"(A) the importation will be for purposes that are not detrimental to the survival of the species of which the specimen is a member;

"(B) the exportation or introduction from the sea will not be detrimental to the survival of such species; and

"(C) in the case of importation or introduction from the sea, the specimen will not be used primarily for commercial purposes.

"(3) Apply to each permit or certificate that authorizes the exportation or introduction from the sea of a specimen of any species included in Appendix II of the Convention appropriate conditions and restrictions so that trade in other species listed in either—

"(A) Appendix I of the Convention; or

"(B) Appendix II of the Convention pursuant to paragraphs 2(a) of Article II thereto;

will be brought under effective control.

"(4) Apply to each permit or certificate that authorizes the exportation or introduction from the sea of a specimen of any species included in Appendix II of the Convention pursuant to paragraph 2(a) of Article II thereto appropriate conditions and restrictions so that the exportation or introduction from the sea will not be detrimental to the survival of the species of which the specimen is a member.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—For purposes of the Convention, the Scientific Authority shall carry out only the following functions:

"(1) Advise the Management Authority—

"(A) whether the importation of a specimen of any species included in Appendix I of the Convention will be for purposes that are not detrimental to the survival of the species of which the specimen is a member; and

"(B) if such specimen is a living specimen, whether the proposed recipient of the specimen is suitably equipped to house and care for the specimen.

"(2) Advise the Management Authority whether the exportation or introduction from the sea of a specimen of any species included in Appendix I or II of the Convention (except species included pursuant to paragraph 2(b) of Article II thereto) will not be detrimental to the survival of the species of which the specimen is a member.

"(3) Recommend to the Management Authority conditions and restrictions appropriate to carry out paragraphs (3) and (4) of subsection (b).

"(4) Monitor export permits referred to in paragraphs (3) and (4) of subsection (b) and the actual exports of specimens made under the authority of such permits and, if the Scientific Authority determines that the exportation of any species included in Appendix II of the Convention should be limited in order to maintain such species at a level well above the level at which the species might become eligible for inclusion in Appendix I, recommend to the Management Authority suitable measures that should be considered in the granting of export permits for specimens of any such species. The Scientific Authority shall base the advice and recommendations required of it under this subsection on the best available scientific and commercial data. Advice given by the Scientific Authority under paragraphs (1) or (2) may not be conditioned upon the acceptance of recommendations made by it under paragraph (3) with respect to the species concerned.

"(d) ADVISORY PANEL.—(1) There is established the Endangered Species Advisory Panel (hereinafter in this subsection referred to as the 'Panel').

"(2) The Panel shall be composed of the Director of the United States Fish and Wildlife Service, who shall also serve as the chairman of the Panel, and an even number (but not more than 8) of other members appointed by, and who serve at the pleasure of, the Secretary. No individual is eligible for appointment as a member of the Panel unless that individual is knowledgeable or experienced in the conservation of wild fauna or flora.

"(3) The Panel shall meet at the call of the chairman.

"(4) The Secretary shall provide to the Panel necessary staff and administrative support.

"(5) The members of the Panel, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties of the Panel. Each member of the Panel shall be reimbursed for actual expenses incurred in the performance of such duties.

"(6) The Panel shall provide technical advice to the Management Authority and to the Scientific Authority on matters arising in the administration of their respective functions under the Convention.

"(7) The Federal Advisory Committee Act does not apply to the activities of the Panel.

"(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wilderness Preservation in the Western Hemisphere."; and

(3) by amending the table of contents by inserting immediately after the section title for section 8 the following:

"Sec. 8A. Convention implementation.".

SEC. 7. Section 10(f) of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.".

Mr. BREAUX (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

AMENDMENT OFFERED BY MR. BREAUX TO THE AMENDMENT MADE IN ORDER UNDER THE RULE

Mr. BREAUX. Mr. Chairman, I offer an amendment to my amendment made in order under the rule.

The Clerk read as follows:

Amendment offered by Mr. Breaux to the amendment made in order under the rule: Page 7, strike out line 12 and all that follows down through and including line 24 on page 11, and inserting the following:

"CONVENTION IMPLEMENTATION

"SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

"(d) ENDANGERED SPECIES SCIENTIFIC AUTHORITY COMMISSION.—(1) There is hereby established within the U.S. Fish and Wildlife Service the Endangered Species Scientific Authority Commission (hereinafter in this section referred to as the 'Commission').

"(2) The Commission shall be composed of scientifically qualified agency representatives. Each of the following shall designate one such representative from his agency:

"(A) The Secretary of the Interior, whose representative shall be the Chairman.

"(B) The Secretary of Agriculture.

"(C) The Secretary of Commerce.

"(D) The Secretary of Health, Education, and Welfare.

"(E) The Director of the National Science Foundation.

"(F) The Chairman of the Council on Environmental Quality,

"(G) The Secretary of the Smithsonian Institution is invited to designate a representative.

"(3) The Commission shall make recommendations to the Director of the U.S. Fish and Wildlife Service on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention.

"(4) In the discharge of its responsibilities, the Commission shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the govern-

mental and non-governmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

"(5) The Secretary shall designate an Executive Secretary for the Commission, and shall provide the necessary staff and administrative support for the Commission.

Mr. Breaux (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The Chairman. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. Breaux. Mr. Chairman, the 1978 amendments to the Endangered Species Act were passed by the House on the second to last day of the session. The conference report was adopted on the last day of the session. Obviously, very little time was available to insure absolute technical consistency throughout all of the new provisions. This year, in our oversight hearings, the committee received a number of suggestions for changes in various portions of the 1978 amendments. Some of these changes were suggested by the administration, which has tested the new exemption process in two separate instances. Others were suggested by the General Accounting Office which has just completed an extensive study of the endangered species program.

This amendment incorporates a number of these suggestions and adds some others that reflect information developed during the oversight hearings. We believe that all of these changes will measurably improve the administration of the act and the exemption process created last year.

SECTION 3

The first portion of the amendment (section 3) makes a technical amendment to the definition of "irresolvable conflict" in the act. This amendment is necessary to make several provisions of the act relating to the exemption process consistent. Under the 1978 amendments the review board must determine whether there is an irresolvable conflict before proceeding to consider the merits of an exemption application. The act currently defines this term as an action that "would jeopardize" the continued existence of an endangered species. Other portions of last year's amendments, however, refer to actions that may or are likely to jeopardize a species. In order to make these provisions consistent these various sections are keyed to the standard described in section 7 of the act.

SECTION 4

Section 4 of the amendment amends the notice provisions of the 1978 amendment to allow the Secretary to publish a summary of proposed critical habitat proposals in local newspapers rather than the complete text.

This section also amends the emergency regulation provisions of the act to allow emergency listings of species to remain in effect for 225 days. The statute currently limits the time for emergency listings to 120 days. The extension of time is necessary because of the procedural requirements, including the preparation of an economic impact statement, added to the act last year.

Section 4 of the amendment also requires the Secretary to develop guidelines and procedures for disposing of petitions to list and delist species, and for ranking listing and recovery proposals. These amendments were originally suggested by colleague Robin Beard. The amendments are taken directly from the findings of the General Accounting Office. The GAO found that the endangered species office failed to develop and implement systems for recording petitions and ranking the priority of listing and recovery proposals. This amendment will insure that the deficiency cited by the GAO is corrected.

SECTION 5

The next section of the amendment amends section 7 of the act to require Federal agencies to insure that their actions are "not likely" to jeopardize the continued existence of endangered or threatened species or adversely modify or destroy the critical habitat of such species. The act currently requires Federal agencies to insure that any action does not jeopardize a listed species.

The language of the amendment reflects the commonsense interpretation of the requirements of section 7 by the wildlife agencies of the Federal Government in most of the issued biological opinions. These agencies recognize that in some instances the absence of complete data on a species may make it impossible to know with complete certainty the potential impact of an agency action on a listed species. Thus, the wildlife agencies originally proposed that their biological opinions would simply indicate whether an agency action was likely or not likely to jeopardize a listed species.

The amendment to section 7(a), which would require all Federal agencies to insure that their actions are not likely to jeopardize endangered species, simply brings the language of the statute into conformity with existing regulations, agency practice, and judicial decisions, such as the opinion in National Wildlife Federation against Coleman.

The joint regulations published by the Fish and Wildlife Service and the National Marine Fisheries Service at part 402 of title 50 of the Code of Federal Regulations, require those agencies to render biological opinions which advise whether or not proposed agency actions are likely to jeopardize an endangered species. Courts have given substantial weight to these biological opinions as evidence of an agency's compliance with section 7(a). My amendment would not alter this state of the law. It is not intended to lessen in any way an agency's obligation under section 7(a) to avoid taking an action where it cannot insure, after consultation with the wildlife agencies, that the action is not likely to result in jeopardy to a listed species or in the adverse modification of designated critical habitat.

Although the wildlife agencies adopted this commonsense interpretation of section 7, I am concerned that the Fish and Wildlife Service and the National Marine Fisheries Service may be tempted to issue negative biological opinions whenever not enough information is known about a particular species. This amendment will require the wildlife agencies to frame their biological opinion on the evidence that is available and will require them to evaluate the likelihood of jeopardy as a result of the agency action. In some cases, it will be difficult, if not impossible, for a Federal agency to make certain that its action does not jeopardize a listed species or adversely modify its critical habitat. No matter how many precautions are taken, there may be a small chance that the agencies' action will end up jeopardizing the species. No agency can or should be expected to give a 100-percent guarantee of no adverse impact.

I am concerned that the language of the existing statute could be interpreted to require this guarantee. The language I have proposed would continue to give the benefit of the doubt to the species, and it would continue to place the burden on the action agency to demonstrate that its action will not violate the standard of the act. The language, however, allows Federal agencies to consider the probability or likelihood of jeopardizing a listed species in deciding whether to go ahead with a particular action.

In an imperfect world I believe that the best that we can ask of Federal agencies is that they be sensitive to the potential adverse impacts of their actions, that they give considerable weight to the biological opinions of the wildlife agencies, and that they make sure that their actions are not likely to jeopardize a listed species. To require more would not only be asking the impossible, it would lead to dozens of unnecessary exemption applications.

Unfortunately, there will be many instances when not enough information is available on a particular species to evaluate the potential impact of an action with certainty. This language is not intended to absolve Federal agencies from the responsibility of cooperating with the wildlife agencies in developing needed information. In many cases the most prudent and responsible action a Federal agency can take is to attempt to gather more information abou a species so that unnecessary conflicts can be avoided.

Section 5 of the amendment also requires consultation on proposed species. This amendment was suggested by the General Accounting Office. It is intended to get the development agency and the wildlife agency talking about endangered species problems at the earliest opportunity—before the problem becomes unresolvable.

This section also clarifies the permanent exemption provision of the 1978 amendments to provide that exemptions granted by the Endangered Species Committee will apply to all endangered and threatened species that are identified in the biological assessment or are the subject of the consultation process.

SECTION 6

Section 6 of my amendment restores a measure of order and accountability to U.S. trade policy in endangered and threatened wildlife. It is an entirely separate issue from the controversies we have encountered in the administration of the act. The amendment is necessary because the system for carrying out our obligations under the Convention on International Trade in Endangered Flora and Fauna has completely broken down and needs to be restored to working order.

Under the Convention the United States designates two agencies—a Management Authority and a Scientific Authority, to administer trade regulations regarding species whose survival is threatened by commercial exploitation. The U.S. Management Authority resides in the Interior Department and the Scientific Authority, composed of seven natural scientists from various executive departments, is uniquely autonomous. This arrangement was created by an Executive order authorized by section 8 of the Endangered Species Act.

A full day of hearings held by the Subcommittee on Fisheries, and Wildlife Conservation and the Environment uncovered some rather startling facts about the Scientific Authority which I believe Members interested in accountability in Government will be concerned about. The ESSA, as the Scientific Authority is referred to, publishes regulations, interprets the Convention, sets its own operating procedures and limits trade in listed species at its discretion with no official policy guidance from Congress or the executive branch. It is an unaccountable, extra governmental organization capable of overriding official Interior Department decisions and disrupting wildlife management and trade policy at its discretion. The Scientific Authority is not only unaccountable to any single governmental official, its members have decided that they are not even required to represent the views of the agency that appointed them. To my knowledge the ESSA is the only agency of the Federal Government where unelected and unappointed Federal civil servants are allowed to promulgate rules and regulations without review by a higher authority. It creates enormous confusion and unpredictability which has resulted, on at least one occasion, in the publication of regulations by the ESSA completely negating the U.S. Fish and Wildlife Service regulations regarding trade in the same species. I find the spectacle of two separate agencies canceling out each other's regulations unacceptable and more than a bit ridiculous.

The amendment which I offer today simply makes the ESSA accountable to the Secretary of the Interior and gives it the same status as the management authority under the Convention. It leaves the ESSA intact with full authority to administer its obligations under the Convention, but makes it responsible to the Secretary like any other unit of the Department of the Interior.

My amendment fills a vacuum created by a complete lack of congressional direction in this area. In fact, we discovered that the Convention received the barest attention imaginable when it was ratified by the Senate. The Senate ratified the Convention without debate by a voice vote and without a hearing. The Library of Congress, when asked to research the question of the origin and limits of the ESSA's authority, reported that no information exists other than the record of the hearing held by my subcommittee on July 16 of this year.

Now some might argue that my amendment somehow violates the spirit of the Convention. Nothing could be more false. The amendment explicitly gives the Secretary of the Interior all of the authority granted the Scientific Authority by the Endangered Species Convention.

Nothing in the Convention requires the Scientific Authority to be a completely independent, multiheaded agency, as is now the case. All the Convention requires is that the signatory nations designate a Management Authority and a Scientific Authority. The Convention leaves it completely up to each individual nation to decide how that is to be done. In Canada, for example, many of the Convention responsibilities have been delegated to the individual provinces. This would be the same as delegating our responsibilities to the individual States. I do not propose that we do this, although I should point out that State fish and wildlife conservation agencies are the ones primarily responsible at the working level for making the Endangered Species Convention work.

My amendment is wholeheartedly supported and endorsed by the Association of Fish and Wildlife Agencies which represents all of the State departments of fish and game. They see this amendment as a necessary change which will return some order to the U.S. management of this program without weakening the Convention on Endangered Species.

The amendment before the House, which resulted from our hearings, creates a reasonable system of carrying out U.S. obligations under the Convention. It affirms an important principle of good government, namely—that any agency which publishes regulations, interprets the law and creates policy should be accountable to the executive branch and subject to the expressed will of Congress. The ESSA, without my amendment today, is accountable only to itself.

Mr. McCLOSKEY. In making the legislative history on this amendment and the intention of the amendment, the only question that I would ask the gentleman in this: When the Convention was adopted, it was clearly the intention of the parties to the Convention and their intent that the Scientific Authority make independent scienific judgments.

If I understand the gentleman's amendment correctly and what it replaces, there is no intention of this amendment to cause the scientific judgment of the Scientific Authority or the Secretary acting in that capacity to be other than independent; am I correct?

Mr. BREAUX. I would say to the gentleman in response to his question that I see nothing in the International Convention on Endangered Species that requires the creation of a completely separate independent authority. They are required to make scientific biological decisions, and they should have the freedom to make those decisions within the structure of their organization. This amendment allows them to have the same members appointed that they have under the existing authority, allows them to take every action that they are guaranteed authority to take under the CITES Convention. My amendment simply places that organization within the Department of the Interior so that they will fit within the boundaries and confines of the Department of the Interior as the Management Authority is operating today.

Mr. McCLOSKEY. All right. I have no problem, if I can finish this question. Clearly the Management Authority that the Secretary will exercise is a policymaking decision that Government policy would govern. In his capacity as the Scientific Authority, I take it he is free to make scientific judgments as opposed to policy judgments that may be different from policy judgments.

Mr. BREAUX. I would say to the gentleman, the gentleman I think is basically correct, with the explanation that it is my intent in offering this amendment to say that they are the ones who are initially responsible for looking at the scientific and biological data and making the decision based independently on their finding as a Scientific Authority. That Scientific Authority must operate within the Department of the Interior under the Fish and Wildlife Service. They are a part of that under this amendment, and they would be under the same restrictions and obligations that any other subagencies of the Fish and Wildlife Services would be.

Mr. McCloskey. Let me draw an example if I can, because we have a similar situation with respect to the International Whaling Commission where we have been successful because our scientists who reached opinions as to whether whale stocks were declining, diminishing, or increasing were making independent scientific judgments. That is what I mean by scientific judgment, that this is a scientific judgment independent of political persuasion that the Scientific Authority would be making. Am I correct?

Mr. Breaux. Their ability to make an independent biological scientific decision is not affected.

Mr. McCloskey. It is independent of policy decisions? It is a scientific judgment made on a scientific basis?

Mr. Breaux. It is based on science and the biology of the species they are asked to look for. I do not want to give the gentleman any incorrect impression. They are part of the Fish and Wildlife Service. They are part of the Department of the Interior, and those agencies and officials look at their actions, and if they see that they are outside of or exceeding their authority, or are in violation of their rules in the Department of the Interior, then they point out that that is not the way they should be operating. Then they would have that authority, as they have with Management Authority.

Mr. McCloskey. I think I understand, but I just want to say that the Secretary of the Interior had a dual responsibility on rattlesnakes, one of which was a scientific opinion that they were diminishing, and one was a political opinion as to whether they ought to be removed from the menu of a local restaurant. I just want to make clear that the legislative history of this act makes a distinction between the scientific opinions of scientists, which are independent and must be under the Convention, and the policy decisions that, of course, should be accountable under the Management Authority.

Mr. Breaux. I think the gentleman and I are correct in our understanding that the intent is not to delineate in any way or take in any way the responsibility that is guaranteed to them under the CITES Convention.

Mr. McCloskey. That is, the independence of scientific judgment?

Mr. Breaux. That is correct, but it is not the intent, and I think the amendment very clearly does not allow them to do anything that the Convention does not allow them to do.

Mr. McCloskey. I thank the gentleman.

Mr. Breaux. I would merely conclude, Mr. Chairman, that my amendment is wholeheartedly supported and endorsed by the Association of Fish and Wildlife Agencies throughout the United States. The bill is a compromise package. It is not unanimous with everybody's support. Many groups are not completely satisfied with it, but I think many groups have come to the correct conclusion, as many Members of Congress have, that the only way we are going to make this process work is to work together and work in a spirit of compromise in order to allow the Endangered Species Act to survive.

Mr. Chairman, I yield back the remainder of my time.

The Chairman. The question is on the amendment to the amendment made in order under the rule.

The amendment to the amendment made in order under the rule was agreed to.

Mr. FORSYTHE. Mr. Chairman, I take this time to support the Breaux amendment and the modification just agreed to.

Mr. Chairman, the Endangered Species Act of 1973 represents the most far-reaching wildlife conservation statute ever enacted. It established a clear national policy to ensure the survival of those species of fish and wildlife which have become endangered because of natural causes or because of man's activities. To effectuate this policy, the act prohibits any Federal agency from taking any action which would adversely affect an endangered species or its critical habitat.

The passage of the Endangered Species Act preceded the oil embargo, rampaging inflation, and the increasing shortage of natural resources in this country. In the years following 1973, there was a growing awareness that the needs of this Nation's fish and wildlife resources would have to be balanced against society's needs for nonliving resources. The absolute prohibitions of the Endangered Species Act began to be called into question. These questions led to the passage, in 1978, of a series of amendments establishing a special Endangered Species Committee which was authorized to permit the completion of various projects when the benefits of the project outweighed the conservation needs of the endangered species involved.

I believe these amendments were a major step forward in introducing a necessary balance into the Endangered Species Act. In fact, it is my firm belief that without the passage of these amendments, the act would have been lost. The Endangered Species Act is an important statement of national policy, and I believe it must be preserved.

Since the passage of the 1978 amendments, we have discovered several problems associated with their implementation. Most of the amendments being offered by the gentleman from Louisiana seek to resolve these problems. For example, when the conferees met to resolve the differences between the House and Senate bills during the last Congress, it was our intent that exemptions granted by the Endangered Species Committee should be permanent. The legislative history, however, is less than clear. To clarify congressional intent, one of the gentleman's amendments provides that if an exemption has been granted, that exemption shall be permanent with respect to all listed species. But the gentleman's amendment contains a safeguard. If the species was not identified in a biological assessment and if the Secretary finds that the completion of the project will cause the extinction of the species, the Endangered Species Committee may reconsider whether to grant an exemption for the project.

The 1978 amendments provide that either a Federal agency or a permit or license applicant can apply to the Endangered Species Committee for a project exemption. Prior to filing for such an exemption, a biological assessment must be completed by the party seeking the project exemption. However, the act only authorizes a Federal agency to do an assessment and, therefore, a permit or license applicant is effectively blocked from filing for an exemption. The gentleman's amendments remedy this inconsistency in the act by specifically providing that permit and license applicants may conduct biological assessments.

Another amendment adopts a recommendations of the General Accounting Office that project sponsors consult regarding the impact of the project on species which are proposed for listing as endangered. Currently, the consultation requirement extends only to species which have actually been listed. The purpose of requiring consultation on proposed species is to minimize potential conflicts with the Endangered Species Act. If, as a result of the consultation, it is determined that the project will have a negative impact on the proposed species, the Secretary of the Interior must list the species within 90 days or withdraw the proposed listing.

The pending amendment also clarifies the requirements which section 7 of the act places on Federal agencies. Under this section, Federal agencies must insure that any action taken by them does not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of that species critical habitat. The operative word is "insure." That is an unrealistic and unachievable standard since it is impossible to "insure" that an action will have no adverse effect. A more reasonable standard would be to require that Federal agencies not take any action which is likely to adversely affect an endangered species or its critical habitat. This is precisely what the pending amendment does. The amendment modifies the existing insure standard by requiring that Federal agencies only insured their actions are not likely to have adverse effects on endangered species or their critical habitats.

There are several other sections of the gentleman's amendment which clarify the 1978 amendments and I believe these represent an improvement over the 1978 efforts.

Finally, the amendment now before us contains language implementing the International Convention on Trade in Endangered Species. This section of the amendment designates the Secretary of the Interior as the Scientific Authority under the Convention and delineates the functions of both the Scientific Authority and the Management Authority.

Mr. Chairman, the Endangered Species Act amendments which were passed in the last Congress introduced a necessary balance into the act. The amendments under discussion today resolve many of the technical deficiencies of the 1978 amendments and clarify the policy of those amendments by insuring that the need to conserve this Nation's fish and wildlife is balanced against this Nation's need for nonliving natural resources.

Mr. Evans of Delaware. Mr. Chairman, I strongly support the authorization of appropriations to carry out the purposes of the Endangered Species Act of 1973 for another 3 years. America's beleaguered wildlife, with its evershrinking habitats, needs strong protection if it is to thrive—much less survive—in the coming years.

In the 95th Congress, the Merchant Marine and Fisheries Committee, of which I am a member, and others considered at length the Endangered Species Act and the various criticisms which had been leveled since passage of the original act. In 1978, the House approved amendments to the 1973 act which responded to those criticisms by providing some flexibility and a means for balancing environmental and economic interests. I think the act we now have is a fair and good law, and we should keep it intact.

Mr. Chairman, I note that today we have before us not only an authorization bill, but various amendments, including one offered by the chairman of the Subcommittee on Fisheries, Wildlife Conservation and the Environment. As a member of that subcommittee, I must say that I would have very much preferred having had a chance to review and consider these amendments in subcommittee and full committee, since some were substantive in nature and not purely technical.

The fact that these substantive amendments were not considered in committee, where such matters are best considered, is water over the dam, and I will not mention it further here.

To focus now on the amendment offered by the gentleman from Louisiana (Mr. Breaux) I have been particularly concerned with section 6, regarding the implementation of the Convention on International Trade in Endangered Species (CITES). The gentleman's amendment as printed in the Record on September 20 transferred the Endangered Species Scientific Authority to the U.S. Fish and Wildlife Service and restricted their functions and responsibilities. I understand that the effect of that original amendment was to place the United States in violation of both the letter and spirit of CITES. The implementation of an international treaty should not be taken lightly, especially one which the United States initiated and has taken the lead in implementing. For this reason I would have opposed the gentleman's amendment in its original form.

However, I appreciate the fact that Mr. Breaux in his pending amendment, has taken steps to address some of the concerns that have been expressed. I think Mr. Breaux's amendment to his amendment is a move in the right direction and I will not oppose it's adoption.

In conclusion, I must note for the record that by transferring the Scientific Authority to the U.S. Fish and Wildlife Service one can raise serious question as to the "independence" of that Authorities' subsequent determinations. While this action apparently does not violate the letter of the CITES, it does seem inconsistent with the spirit of the treaty. It is my hope that to the extent they are able, the Scientific Authority continues to make its judgment in an independent fashion.

AMENDMENT OFFERED BY MR. BOWEN TO THE AMENDMENT MADE IN ORDER UNDER THE RULE, AS AMENDED

Mr. BOWEN. Mr. Chairman, I offer an amendment to the amendment made in order under the rule, as amended.

The Clerk read as follows:

Amendment offered by Mr. Bowen to the amendment made in order under the rule, as amended: Page 1, between lines 8 and 9, insert the following:

(1) by amending subsection (b)(1) by striking out "him" and inserting in lieu thereof the following: "him after conducting a review of the status of the species";

Page 1, line 9, strike out "(1)" and insert "(2)".

Page 1, line 12, insert "shall" before "publish".

Page 1, line 13, strike out "text" and insert "general notice and the complete text".

Page 1, line 17, strike out "text" and insert in lieu thereof "text, and a map of the proposed critical habitat".

Page 1, between lines 19 and 20, insert the following:

(3) by amending subsection (f)(2)(B)(iv)(II) by striking out "if requested," and inserting in lieu thereof "if requested within 15 days after the date on which the public meeting is conducted,".

Page 1, strike out line 20 and all that follows down through line 12 on page 2 and insert the following:

(4) by amending subsection (f)(2)(C)(ii) by inserting at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."; and

Page 2, line 13, strike out "(3)" and insert "(5)".

Page 2, line 15, strike out "GUIDELINES AND" and insert "AGENCY".

Page 2, line 16, strike out "develop and implement guidelines and" and insert "by regulation establish agency".

Page 2, line 18, strike out "guidelines and".

Page 4, strike out lines 3 through 11, inclusive, and insert in lieu thereof the following:

"(3) Each Federal agency shall confer with the Secretary on any agency action which may jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).".

Page 5, line 1, strike out "consultation" and insert "cooperation".

Page 6, strike out line 20 and all that follows down through line 6 on page 7 and insert in lieu thereof the following:

(B) by amending paragraph (2)(B) to read as follows:

"(2)(B) An exemption shall be permanent under subparagraph (A) unless—

"(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation or was not identified in any biological assessment conducted under subsection (c), and

"(ii) the Committee determines within 60 days that the exemption should not be permanent.".

Mr. BOWEN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. BOWEN. Mr. Chairman, I would like to congratulate the gentleman from Louisiana (Mr. BREAUX) for the outstanding job he has done in preparing the amendments to the legislation which we developed last year. These are amendments which I think make significant improvements in our legislation based upon the year's experience we have had in administering that act. I have met at length with the gentleman from Louisiana.

We have discussed some of the aspects of this amendment and ways that it might be clarified in certain instances. I have at the same time discussed the amendments I am offering with the environmental organizations represented here in the capital, and I have discussed them with the Fish and Wildlife Service. They found no objection to them, and I think my amendments will preserve the spirit and purpose of the Endangered Species Act and the Breaux amendment.

These amendments, Mr. Chairman, involve several areas and in most cases simply make small changes in language. In one instance it is a matter of changing the words "consult and consultation" to "confer and cooperate" simply to clarify the intent of the act.

In another instance, we have a recommendation from the GAO which indicates that the Fish and Wildlife Service should proceed with a status review before proposing an actual listing itself. In many cases they have failed to do this. Although they have stated in testimony before our committee that they would do this, they have, in fact, not done it in several instances.

In one case, for example, they proposed the listing of an endangered species, the green pitcher plant in Alabama, and upon proposing it they discovered that 2 weeks earlier they had signed a contract with a botany professor at Mississippi State University in my district to do a year's study to determine whether or not they should propose it. I think that this requirement for status review will make a constructive change in the legislation.

In another instance, we intended in our legislation last year that there be both public meetings and public hearings before a listing. Some of the administrative regulations issued by the Fish and Wildlife Service have confused that goal and have made it impossible to have clearly established the two separate proceses and, in fact, roll them into one. This amendment would clarify language of the Endangered Species Act.

There are other technical changes, Mr. Chairman, which I will not go into, but I know of no opposition to these amendments.

Mr. BREAUX. Mr. Chairman, would the gentleman yield?

Mr. BOWEN. I will be happy to yield to the gentleman from Louisiana.

Mr. BREAUX. I would like to interrupt the gentleman's presentation on the amendments to say the amendments are basically very keyed into the amendments I have offered. The gentleman from Mississippi is to be commended for his presentation. The gentleman was the floor manager, I think, on representing the subcommittee in the last Congress on the 1978 amendments to the Endangered Species Act and the gentleman made a remarkable contribution to the statute.

Mr. Chairman, while I do not want to give anyone the impression there is unanimous consent in Washington or anywhere else on supporting my amendment or the amendments of the gentleman from Mississippi, I do want to commend the gentleman and say to the members of this committee that the amendments are acceptable. I think they are improvements to the amendments we are presenting here today. We would ask that they be supported and adopted.

Mr. FORSYTHE. Mr. Chairman, will the gentleman yield?

Mr. BOWEN. I yield to the gentleman from New Jersey.

Mr. FORSYTHE. Mr. Chairman, we have reviewed these amendments, and as the chairman of the subcommittee has pointed out, we believe that they are all very good amendments and should be approved.

Mr. BOWEN. Mr. Chairman, I thank the gentleman from New Jersey. The gentleman certainly also has made an outstanding contribution to the perfection of this legislation.

Mr. JOHN L. BURTON. Mr. Chairman, I would ask my distinguished friend, from Louisiana, Mississippi, New York, Delaware, New Jersey, or Alaska, what are they doing to me with these amendments, anything?

Mr. BREAUX. Mr. Chairman, if the gentleman will yield, I would say to the gentleman that the gentleman is not on the endangered species list and is not affected in any way by any of the amendments that we are offering here today.

Mr. JOHN L. BURTON. The gentleman knows my affinity for those on the endangered species list.

Mr. BREAUX. We do not change the affinity of the gentleman for the animals and plants that are on the endangered species list, of which the gentleman from California is not a member.

Mr. JOHN L. BURTON. Mr. Chairman, I yield to the distinguished chairman from the sovereign State of New York.

Mr. MURPHY of New York. Mr. Chairman, I would like to assure my distinguished colleague from California that since the committee visited his district, that none of the plants in which the gentleman has a particular interest are included within this legislation.

Mr. JOHN L. BURTON. They are not in danger, but I am being serious, the gentleman from Louisiana stated that there was no unanimous support for the gentleman's amendment; but by and large, how do the environmentalists feel about it?

Mr. BREAUX. Mr. Chairman, will the gentleman yield?

Mr. JOHN L. BURTON. I would be happy to yield to the gentleman from Louisiana.

Mr. BREAUX. Mr. Chairman, I would say that the initial amendments that we proposed were controversial, a great deal more controversial than what we are presenting here today. After a series of meetings with the environmental groups and with the administration, we now have reached the point where we can support these amendments. The administration does support the amendments we are offering today.

While some environmental groups would like phrases changed in some manner, I think by and large we can say that we are moving forward together on this. While they might prefer some different language, I do not think anyone is concerned that any grave damage is being done. The spirit and the integrity of the bill is preserved.

Mr. JOHN L. BURTON. Mr. Chairman, I thank the gentleman. There are a few words in the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mississippi (Mr. BOWEN) to the amendment made in order under the rule, as amended.

The amendment to the amendment made in order under the rule, as amended, was agreed to.

The CHAIRMAN. Are there other amendments to the amendment made in order under the rule?

AMENDMENT OFFERED BY MR. FORSYTHE TO THE AMENDMENT MADE IN ORDER UNDER THE RULE, AS AMENDED

Mr. FORSYTHE. Mr. Chairman, I offer an amendment to the amendment made in order under the rule, as amended.

The Clerk read as follows:

Amendment offered by Mr. FORSYTHE to the amendment made in order under the rule, as amended: After the last line of the amendment offered by Mr. BREAUX, insert the following:

SEC. 8. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended as follows:

(1) Section 2(a)(5) is amended by striking out "fish and wildlife." and inserting in lieu thereof "fish, wildlife, and plants.".

(2) Section 4(f)(2)(C)(ii) is amended—

(A) by striking out "fish or wildlife." and inserting in lieu thereof "fish or wildlife or plants,"; and

(B) by striking out "fish and wildlife," and inserting in lieu thereof "fish, wildlife, and plants,".

(3) Section 8(b) is amended—

(A) by inserting "and plants" immediately after "fish or wildlife" in paragraph (1); and

(B) by inserting "or plants" immediately after "fish or wildlife" each place it appears in paragraph (3).

(4) Section 15 (as amended by section 2 of this Act) is amended by striking out "Act," at the end of paragraph (2) and inserting in lieu thereof "Act; and"; by adding immediately after such paragraph the following new paragraph:

"(3) not to exceed $1,500,000 for fiscal year 1980, not to exceed $1,750,000 for fiscal year 1981, and not to exceed $1,850,000 for fiscal year 1982, to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of terrestrial plants."

Mr. FORSYTHE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. FORSYTHE. Mr. Chairman, I am offering this amendment in order to give the Department of Agriculture the resources it needs to carry out its responsibilities under the Endangered Species Act. Pursuant to that act and the Convention on International Trade in Endangered Species, the United States has embarked on a program to protect plants which are threatened with extinction.

The Department of Agriculture has been charged with the responsibility for enforcing the provisions of the Endangered Species Act and the International Treaty as they relate to plants. The act makes it unlawful for any person to deliver, receive, sell, or transport in interstate or foreign commerce any plant listed as endangered unless that person has a permit from the Secretary of the Interior. It is the Secretary of Agriculture, however, who enforces these provisions. Unfortunately, the Department's efforts have been rendered almost completely ineffective because of a lack of manpower and funds.

In fiscal year 1978, 6.85 million plants were imported into the United States through 84 ports of entry. Because of a lack of adequate funding and manpower, the Department of Agriculture has inspectors in only 14 ports of entry.

With such an inadequate level of enforcement, there is virtually no deterrent to the illegal import and export of plants. In addition, plants are inadequately inspected for disease or pests which they may be carrying.

In preparing this amendment, members of the committee staff met with acknowledged plant smugglers who detailed the case with which they can import and export plants. The smugglers said it was so easy because of the almost nonexistent enforcement of the Endangered Species Act and the International Convention. This illegal trade in endangered plants must be stopped because the uncontrolled trade in endangered plants is having serious and adverse effects on this Nation's plant conservation program.

It is important that endangered plants be conserved for future uses. Plants serve man in many ways. Many species are used directly by man as timber, industrial raw materials, components of drugs, or as ornaments. These plants of proven economic value are particularly vulnerable to overexploitation for commercial purposes. Should they be driven to extinction, their valuable properties would be lost.

To adequately monitor the importation of almost 7 million plants and to effectively enforce regulations designed to protect endangered plants, the Department of Agriculture needs additional funds. My amendment authorizes the appropriation of $1.5 million in fiscal year 1980 and $1.75 million in fiscal year 1981 and $1.85 million in fiscal year 1982.

In addition, my amendment adds language to the congressional findings so that plants are included in the congressional finding that States and other interested parties should be encouraged to develop and maintain conservation programs for endangered species. My amendment also adds the word "plants" to section 8(b) of the act, thereby enabling the Secretary of State to enter into agreements with foreign nations for the conservation of endangered plants. Finally, my amendment gives the Secretary of the Interior authority to take temporary action to conserve plants when there is an emergency posing a significant risk to the species. The Secretary already has such authority for fish and wildlife but lacks the emergency authority to conserve plants.

Mr. Chairman, this amendment has the support of the administration and of the environmental community, it will permit the Department of Agriculture to carry out its responsibilities under the act, and it will help stop the illegal trade in endangered species of plants. For these reasons, I urge its adoption.

Mr. MURPHY of New York. Mr. Chairman, I rise in strong support of the Forsythe amendment. It certainly is a necessary amendment.

Mr. Chairman, this amendment will substantially improve the efforts to control the international illegal trade in endangered species of plants. The amendment is very simple. It authorizes appropriations to the Department of Agriculture to carry out their important responsibilities under the Endangered Species Act. In addition, the amendment authorizes the Secretary to encourage foreign nations to develop conservation programs for endangered plant species.

This amendment closes a very unfortunate omission in the original Endangered Species Act. Under that act, the Department of Agriculture has the responsibility to regulate the importation and exportation of endangered plants. At the working level of the Department this function has been delegated to the Animal and Plant Health Inspection Service. The Service received this authority because they already operate a nationwide system of inspection stations to prevent the introduction of dangerous pests into this country.

The problem is that although the Animal and Plant Health Inspection Service operates inspection stations and is supposed to insure that endangered plants have the appropriate import permits, they have never received funds for this task and as a practical matter are not fulfilling their obligations.

By the Department's own admission, plant inspectors are not adequately inspecting importation of plants for violations of the Endangered Species Act and the International Endangered Species Convention. In fact, in 1977, the Department informed its regional directors that because the Department had not received funds to enforce the Endangered Species Act, no shipment of plants could be detained or refused entry because of a failure to comply with the act or the convention.

The basic problem is that there is a very high level of plant importations into this country. When Agriculture began enforcing the trade regulations in mid-summer 1978, it seized 200 shipments containing over 20,000 plants within 11 weeks. Department records suggest that the total volume of the trade numbers in the millions. Some former plant dealers have openly admitted to the committee that they often obtained extremely rare plants by smuggling them into the United States right through the Agriculture inspection stations. The existing inspection personnel cannot hope to properly inspect plant importations for violations of the Endangered Species Act. First, the inspectors are largely trained to look for insects on the plants. They are essentially bug men. They are not trained to identify illegally imported endangered plants. Second, the inspection personnel have to carry out their endangered species duties in addition to all of their other duties. The Department has recently written me asking that H.R. 2218 be amended to provide an authorization to permit the Department to seek a moderate increase in their inspection personnel. This amendment conforms to the departmental request.

This amendment will help stem the alarming trade in illegal plants. A number of individual States in this country have passed strong laws to protect their native species, but the State actions will never be truly effective until the Federal Government implements a strong inspection system at the various ports of entry.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. FORSYTHE) to the amendment made in order under the rule, as amended.

The amendment to the amendment made in order under the rule, as amended, was agreed to.

The CHAIRMAN. Are there other amendments to the amendment made in order under the rule?

The question is on the amendment made in order under the rule, as amended.

The amendment made in order under the rule, as amended, was agreed to.

The CHAIRMAN. Are there other amendments to the bill?

AMENDMENT OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Alaska: Page 3, after line 2, insert the following new Section 3 and renumber subsequent sections accordingly:

"SEC. 3. Section 3(8) of the Endangered Species Act of 1973 is amended by striking the words 'mollusk, crustacean, arthropod or other invertebrate,'."

Mr. YOUNG of Alaska. Mr. Chairman, with the assurance of my good friend, the chairman of the subcommittee, and further, with a full understanding of the hard work and effort he and the gentleman from New Jersey (Mr. Forsythe) have put into this bill, I ask unanimous consent that I may be permitted to withdraw my amendment at this time.

The CHAIRMAN. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. BONKER. Mr. Chairman, the distinguished chairman of the Merchant Marine and Fisheries Subcommittee on Fisheries, Wildlife Conservation and the Environment has proposed an amendment to H.R. 2218 which raises some questions about the timing, manner, and potential effect if adopted by the committee. I welcome the spirit of consultation represented by this compromise and intend to vote in favor of the amendment. But I wish to make it clear that I do so reluctantly.

The compromise amendment to the endangered species authorization bill offered by Mr. Breaux is an improvement over the original amendment to be sure, but this amendment places the United States in violation of the spirit of the Convention on International Trade in Endangered Species (CITES) to which the United States is a party. Indeed, the Department of State has commented that Mr. Breaux's compromise would not be "an express violation of CITES".

Let me briefly discuss the reasons for which I believe Mr. Breaux's amendment is not in strict conformity with U.S. international legal obligations under CITES. The convention intends that the Endangered Species Scientific Authority (ESSA), which each country party to the treaty is required to establish, make independent scientific determinations on whether international trade will threaten the existence of an animal or plan species. The purpose and function of ESSA are clear: It is to act as a check and balance with the Management Authority. Although CITES does not specifically require the Scientific Authority to be independent, the Executive order that established ESSA designated it as a semi-independent body. Contrary to the will of the Executive order, Mr. Breaux would have the Secretary of the Interior serve as both the Scientific and Management Authorities, thereby removing the autonomy of ESSA and raising questions as to the independent scientific judgment of ESSA.

Mr. Chairman, the United States has traditionally exercised a strong and positive influence in international activities concerning endangered species. CITES was initially drafted by us, and was negotiated in Washington, D.C., in 1973. We were the first country to ratify the convention in 1975, and were, therefore, a party when the treaty entered into force on July 1, 1975.

In summary, placing the Scientific Authority under the jurisdiction of the Secretary of the Interior could indicate to the 53 other countries now party to the treaty a weakening of our commitment to protect endangered species, and undermine our leadership in international efforts to conserve the world's endangered animals and plants. Moreover, curtailing ESSA's independence could negatively affect any future attempts to improve American implementation of CITES.

I will, therefore, not oppose the amendment offered by Mr. Breaux, but hope that my colleagues will recognize the possible negative international implications of its passage.

The CHAIRMAN. Are there other amendments to the bill?

If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Flippo, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2218) to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, pursuant to House Resolution 417, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended so as to read:

"A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes".

A motion to reconsider was laid on the table.

HOUSE CONSIDERATION AND PASSAGE OF S. 1143, AMENDED (IN LIEU OF H.R. 2218)

Mr. MURPHY of New York. Mr. Speaker, pursuant to the provisions of House Resolution 417, I call up a similar Senate bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

MOTION OFFERED BY MR. MURPHY OF NEW YORK

Mr. MURPHY of New York. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MURPHY of New York moves to strike out all after the enacting clause of the Senate bill, S. 1143, and to insert in lieu thereof the provisions of the bill, H.R. 2218, as passed, as follows:

That the first sentence of section 7(q) of the Endangered Species Act of 1973 (16 U.S.C. 1536(q)) is amended to read as follows: "There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982.".

SEC. 2. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for fiscal year 1979, and not to exceed $25,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

"(2) not to exceed $2,500,000 for fiscal year 1979, and not to exceed $3,000,000 for each of fiscal years 1980, 1981, and 1982, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.".

SEC. 3. Section 3(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532 (11)) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a)(2).".

SEC. 4. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (b)(1) by striking out "him" and inserting in lieu thereof the following: "him after conducting a review of the status of the species";

(2) by amending subsection (f)(2)(B)(i) to read as follows:

"(i) not less than 60 days before the effective date of the regulation, shall publish—

"(I) the general notice and the complete text of the proposed regulation in the—Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text, and a map of the proposed critical habitat) in a newspaper of general circulation within or adjacent to such habitat;";

(3) by amending subsection (f)(2)(B)(iv)(II) by striking out "if requested," and inserting in lieu thereof "if requested within 15 days after the date on which the public meeting is conducted,".

(4) by amending subsection (f)(2)(C)(ii) by inserting at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."; and

(5) by adding at the end thereof the following new subsection:

"(h) AGENCY PROCEDURES.—The Secretary shall by regulation establish agency procedures to ensure that the purposes of this section are achieved efficiently and effectively. Such procedures shall include, but are not limited to—

"(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c)(2) of this section;

"(2) criteria for making the findings required under such subsection with respect to petitions;

"(3) a ranking system to ensure that species facing a high degree of threat receive priority review for listing; and

"(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section.".

SEC 5. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is further amended—

(1) by amending subsection (a)—

(A) by striking out "(a) CONSULTATION.—" and inserting in lieu thereof "(a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1)";

(B) by striking out the third sentence thereof; and

(C) by adding at the end thereof the following:

"(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

"(3) Each Federal agency shall confer with the Secretary on any agency action which may jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).";

(2) by amending each of subsections (b), (c), (d), (e)(2), (f), (g)(1) and (5), (h)(1), and (m) by striking out "subsection (a)" wherever it appears therein and inserting in lieu thereof "subsection (a)(2)".

(3) by further amending subsection (c)—

(A) by inserting "(1)" immediately after "BIOLOGICAL ASSESSMENT.—", and

(B) by adding at the end thereof the following new paragraph:

"(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.";

(4) by further aemnding subsection (g)(1) by striking out "may jeopardize" and all that follows thereafter in the first sentence thereof and inserting in lieu thereof "would violate subsection (a)(2).";

(5) by amending subsection (g)(2)(A) by striking out "process." and inserting in lieu thereof "process; or, in the case of an agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of title 5, United States Code, with respect to the issuance of the permit or license.";

(6) by amending subsection (g)(3) by redesignating subparagraph (B) as subparagraph (C), and by inserting immediately after subparagraph (A) the following new subparagraph:

"(B) If more than one application for exemption is filed for the same agency action, the same review board shall be convened for each application and shall consider each such application in the manner set forth in paragraph (5).";

(7) by amending subsection (g)(5)—

(A) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively,

(B) by striking out "such exemption applicant" in clause (B) (as so redesignated and inserting in lieu thereof "the Federal agency or exemption applicant, as the case may be", and

(C) by redesignating subclauses (A), (B), and (C) as subclauses (i), (ii), and (iii), respectively; and

(8) by amending subsection (h)—

(A) by amending paragraph (2)(A) to read as follows:

"(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute, but only if a biological assessment has been conducted under subsection (c) with respect to such agency action, a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action, regardless whether the species was identified in the biological assesment."; and

"(2)(B) An exemption shall be permanent under subparagraph (A) unless—

"(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation or was not identified in any biological assessment conducted under subsection (c), and

"(ii) the Committee determines within 60 days that the exemption should not be permanent.".

SEC. 6. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended—

(1) by striking out subsection (e) of section 8;

(2) by adding immediately after section 8 the following new section:

"CONVENTION IMPLEMENTATION

"SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary is authorized and directed to do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

"(d) ENDANGERED SPECIES SCIENTIFIC AUTHORITY COMMISSION. (1) There is hereby established within the U.S. Fish and Wildlife Service the Endangered Species Scientific Authority Commission (hereinafter in this section referred to as the 'Commission').

"(2) The Commission shall be composed of scientifically qualified agency representatives. Each of the following shall designate one such representative from his agency:

"(A) The Secretary of the Interior whose representative shall be the Chairman.

"(B) The Secretary of Agriculture.

"(C) The Secretary of Commerce.

"(D) The Secretary of Health, Education, and Welfare.

"(E) The Director of the National Science Foundation.

"(F) The Chairman of the Council on Environmental Quality.

"(G) The Secretary of the Smithsonian Institution is invited to designate a representative.

"(3) The Commission shall make recommendations to the Director of the U.S. Fish and Wildlife Service on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention.

"(4) In the discharge of its responsibilities, the Commission shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the governmental and nongovernmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

"(5) The Secretary shall designate an Executive Secretary for the Commission, and shall provide the necessary staff and administrative support for the Commission.

"(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wilderness Preservation in the Western Hemisphere."; and

(3) by amending the table of contents by inserting immediately after the section title for section 8 the following: "Sec. 8A. Convention implementation.".

SEC. 7. Section 10(f) of the Endangered Species Act of 1973 (16 U.S.C. 1539 (f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.".

SEC. 8. The Endangered Species Act of 1973 (16 U.S.C. 1631 et seq.) is further amended as follows:

(1) Section 2(a)(5) is amended by striking out "fish and wildlife." and inserting in lieu thereof "fish, wildlife, and plants.".

(2) Section 4(f)(2)(C)(ii) is amended—

(A) by striking out "fish or wildlife." and inserting in lieu thereof "fish or wildlife or plants."; and

(B) by striking out "fish and wildlife," and inserting in lieu thereof "fish, wildlife, and plants,".

(3) Section 8(b) is amended—

(A) by inserting "and plants" immediately after "fish or wildlife" in paragraph (1); and

(B) by inserting "or plants" immediately after "fish or wildlife" each place it appears in paragraph (3).

(4) Section 15 (as amended by section 2 of this Act) is amended by striking out "Act." at the end of paragraph (2) and inserting in lieu thereof "Act; and"; and by adding immediately after such paragraph the following new paragraph:

"(3) not to exceed $1,500,000 for fiscal year 1980, not to exceed $1,750,000 for fiscal year 1981, and not to exceed $1,850,000 for fiscal year 1982, to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of terrestrial plants."

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 2218) was laid on the table.

Calendar No. 161

96TH CONGRESS
1ST SESSION

S. 1143

[Report No. 96–151]

To extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes

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IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 9), 1979

Mr. CULVER, from the Committee on Environment and Public Works, reported the following bill; which was read twice and ordered placed on the calendar

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A BILL

To extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(q) of the Endangered Species Act of 1973 is amended by striking, "not to exceed $600,000 for fiscal year 1979, and not to exceed $300,000 for the period beginning October 1, 1979, and ending March 31, 1980." and inserting in lieu thereof, "not to exceed $600,000 for each of the fiscal years 1979, 1980, 1981, and 1982.".

SEC. 2. Section 15 of such Act is amended to read as follows:

"SEC. 15. (a) Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for the fiscal years 1979 and 1980; not to exceed $25,000,000 for fiscal year 1981; and not to exceed $27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities it may have been given under this Act;

"(2) not to exceed $2,500,000 for the fiscal years 1979 and 1980; not to exceed $3,500,000 for fiscal year 1981; and not to exceed $4,000,000 for fiscal year 1982 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

"(b) There are authorized to be appropriated not to exceed $500,000 for the Department of the Interior to implement the recovery program for the California condor.".

SEC. 3. (a) Section 3(11) is amended by striking "would (A) jeopardize" and inserting in lieu thereof "is likely to (A) jeopardize".

(b) Section 7(g)(1) is amended by striking "may jeopardize" and inserting in lieu thereof "is likely to jeopardize".

SEC. 4. (a) Section 4(f)(2)(C)(ii) is amended by striking "120-day period" each time it appears and inserting in lieu thereof "one-year period".

(b) Such section is further amended by adding at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines on the basis of the best scientific and commercial data that substantial evidence does not exist to warrant such regulation, he shall withdraw it.".

SEC. 5. (a) Section 7(c) is amended by adding at the end thereof the following new sentence: "If an exemption applicant desires to seek a permanent exemption pursuant to subsection (h)(2) of this section, he may conduct a biological assessment pursuant to this subsection.".

(b) The first sentence of section 7(h)(2)(B) is amended to read as follows:

"(B) An exemption shall not be permanent under subparagraph (A) if the Secretary finds, based on the best scientific and commerical data available, that such exemption would result in the extinction of a species that was not the subject of consultation or identified in a biological assessment prior to or in conjunction with the Committee's consideration of such exemption".

Sᴇᴄ. 6. (a) Sections 7(a), 7(b), 7(c), and 7(d) are amended by striking "any endangered or threatened species" wherever it occurs and inserting in lieu thereof "any listed or proposed endangered or threatened species".

(b) Section 4(f) is amended by adding a new paragraph (6) to read as follows:

"(6) Notwithstanding the requirements of subsection 4(b) and of paragraphs (1) through (5) of this subsection, if the Secretary determines pursuant to section 7 that an agency action is likely to jeopardize the existence of an endangered species or threatened species proposed pursuant to this section, or adversely modify the proposed critical habitat of such species, the Secretary shall within 90 days of such determination either publish in the Federal Register a final regulation adding such species or critical habitat to the list published pursuant to subsection (c) of this section, or withdraw the regulation proposing such listing."

Sᴇᴄ. 7. Section 7(g)(2)(A) is amended by striking "not later than 90 days after the completion of the consultation process." and inserting in lieu thereof, "not later than 90 days after the completion of the consultation process, or, in the case of a permit or license applicant, not later than 90 days after final agency action has been taken on the permit or license application.".

Calendar No. 161

96TH CONGRESS } SENATE { REPORT
1st Session } { No. 96–151

ENDANGERED SPECIES ACT AUTHORIZATIONS

MAY 15 (legislative day, APRIL 9), 1979.—Ordered to be printed

Mr. CULVER, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1143]

The Committee on Environment and Public Works, reports an original bill (S. 1143), to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes and recommends that the bill do pass.

GENERAL STATEMENT

1973 LAW

The Endangered Species Act of 1973 was the first statute to authorize a comprehensive national program for the conservation of endangered or threatened species of fish, wildlife, and plants. Under this statute, an endangered species is one which is in immediate danger of extinction; a threatened species is one which is likely to become endangered in the foreseeable future.

The Secretary of the Interior and, for marine species, the Secretary of Commerce are directed to list and issue regulations for the protection of endangered and threatened species. The Secretary is to enter into cooperative agreements with, and provide technical and financial assistance to, qualified States for species conservation programs.

Since protection of habitat is a key element in the protection of all species, the act authorizes the Secretary of the Interior and the Secretary of Agriculture to acquire land for the conservation and propagation of affected plants and animals. Furthermore, section 7 of the act directs each Federal agency to insure that its actions do not jeopardize listed species or result in the destruction or adverse modification of their critical habitat.

1978 AMENDMENTS

Last year Congress approved the Endangered Species Act Amendments of 1978 (Public Law 95-632) which extends through March 31, 1980 the budget authority for the Secretary of the Interior and the Secretary of Commerce to carry out their responsibilities to protect endangered species. While the Senate version of last year's bill contained a 3 year authorization, the conferees accepted the House proposal for a 1½ year extension. The budgetary levels authorized by Public Law 95-632 were $23 million for the Department of the Interior and $2.5 million for the Department of Commerce for fiscal year 1979, and $12.5 million for each agency from October 1 through March 31, 1980, when the authorization expires.

Last year's amendments also made substantive changes in the law, which were intended to provide a mechanism for the resolution of irresolvable conflicts arising between the act's mandate in section 7 to protect endangered species and other Federal activities. Testimony presented at subcommittee hearings during July 1977 and April 1978 indicated, because of the rigid nature of the act, these conflicts would increase in the future.

To provide the needed flexibility, the amendments established a seven-member Endangered Species Committee, composed of the Secretaries of the Interior, Agriculture, the Army, and the Administrators of the National Oceanic and Atmospheric Administration and the Environmental Protection Agency, the chairman of the Council of Economic Advisors, and a representative of the Governor of the State or States affected by the proposed Federal action. The committee is authorized to review each conflict and determine, based on a number of critria set forth in the law, whether the project should be exempted, modified or terminated.

Before a proposed agency action can be considered by the committee, however, a review board must determine that the agency proposing the action has consulted in good faith with the Fish and Wildlife Service or the National Marine Fisheries Service, and that all other alternatives have been examined. This provision essentially codified existing procedures concerning consultation requirements.

In its first action in a special expedited process set up by the 1978 amendments, the Endangered Species Committee decided, unanimously, to exempt the Grayrocks Dam and Reservoir project on the Laramie River in Wyoming, a project sponsored by the Rural Electrification Administration and the Missouri Basin power project after imposing mitigating and enhancement measures to ensure that the project would not destroy the critical habitat of the endangered whooping crane. At the same time the committee agreed, again unanimously, not to exempt the Tellico dam and reservoir, a Tennessee Valley Authority project located in Tennessee.

Other provisions of the 1978 law were intended to improve the process whereby species or their critical habitats are designated. These include requirements for improved public notice and hearings and analyzing the economic impact of critical habitat designations.

SECTION BY SECTION ANALYSIS

Because the current authorization expires in the middle of fiscal year 1980, the Committee on Environment and Public Works must report reauthorization legislation by May 15, 1979. On April 3, 1979, the Subcommittee on Resource Protection conducted a hearing to determine the necessary reauthorization amounts. Testimony was received from officials from the Department of the Interior, the Department of Commerce and the General Accounting Office, as well as from several national conservation groups.

SECTIONS 1 AND 2. REAUTHORIZATION

Section 1 continues through fiscal year 1982 the current annual authorization of $600,000 for the Endangered Species Committee.

Section 2 extends the authorization for the Endangered Species Act at a level of $23 million in fiscal year 1980, $25 million in fiscal year 1981 and $27 million in fiscal year 1982 for the Department of the Interior. The Commerce Department authorization totals $2.5 million in fiscal year 1980, $3 million in fiscal year 1981 and $3.5 million in fiscal year 1982. It should be noted that the amounts authorized for both agencies in fiscal year 1980 are $2.5 million below those recommended by the committee in its March 15 report to the Senate Budget Committee.

The administration has recommended an authorization of $19.3 million for the Interior Department and $2.4 million for the Commerce Department in fiscal year 1980, and such sums as may be necessary for both agencies in fiscal year 1981 and fiscal year 1982. Because the administration's budget request was prepared subsequent to the enactment of the 1978 amendments, this request does not contain sufficient funds for the Fish and Wildlife Service or the National Marine Fisheries Service to carry out the new responsibilities for consulting with the other Federal agencies, analyzing economic impacts of habitat and species listing, and implementing species recovery plans, all of which are mandated in the 1978 amendments. The authorization levels contained in the committee's bill reflect the committee's estimates for funds needed by the two agencies to meet these new mandates.

During the subcommittee's reauthorization hearing, it was learned that the FWS fiscal year 1980 budget does not contain sufficient funds to carry out a proposed recovery plan for the California condor, one of America's outstanding endangered species. This recovery plan has been developed pursuant to a report produced jointly by the National Audubon Society and the American Ornithologists Union. The study concludes that not more than 40 of the creatures remain and that an intensive program of research, habitat protection and captive propagation is the sole hope for saving North America's largest bird. Therefore, section 2 specifically authorizes the necessary funds because of the importance of the program.

SECTION 3. CONFORMING AMENDMENTS

A biological opinion issued by the FWS or NMFS concerning the potential impact of a Federal action on a threatened or endangered species or its critical habitat speaks in terms of whether the action "is likely to jeopardize" the species or its critical habitat. The term "is likely to jeopardize" is used because the fundamental obligation of section 7(a) of the act is that Federal agencies insure their actions do not jeopardize the continued existence of an endangered or threatened species. Thus, completion of a proposed action by a Federal agency would be inconsistent with its section 7 obligation of the action is likely to jeopardize the continued existence of a species.

Therefore, in addressing the subject of these potential conflicts, the term "is likely to jeopardize" was generally adopted throughout the 1978 amendments. For instance, section 7(c) requires Federal agencies to conduct a biological assessment of a proposed action to determine if the action "is likely to jeopardize" any threatened or endangered species. Two provisions of Public Law 95-632, however, do not conform to the rest of the act in this regard. In section 3 (11) the term "irresolvable conflict" is defined as a situation where a federal action would jeopardize a species or critical habitat. Similarly, section 7(g) (1) states that qualified applicants may apply for an exemption if the Secretary issues a biological opinion stating that the Federal action involved may jeopardize a species or its habitat.

In order to avoid confusion resulting from the use of different terms, the committee bill changes both of these phrases to is likely to making them consistent with other provisions of existing law.

The committee recognizes that data concerning a potential jeopardy situation may not be as complete in some situations as it is in others, and expects the Secretary to make a judgment concerning jeopardy on the basis of the best scientific and commercial data available to him at the conclusion of the consultation period.

SECTION 4. EMERGENCY RULEMAKING

Currently the act permits the Secretary to list a species or critical habitat on an emergency basis if a situation exists which poses a significant risk to the continued existence of such species. Any such emergency designation expires after 120 days unless confirmed through the normal rulemaking procedures.

As a result of the new requirements set forth by Public Law 95-632, the average time required for rulemaking now totals from 9 months to 1 year, far longer than the 120 day limit. Therefore, section 4 of the bill makes an emergency designation effective for 1 year, except that the Secretary would be required to withdraw the listing if he finds at any time, based on substantial showing using the best scientific and commercial data available, that the emergency condition no longer exists or that the species should not in fact be listed.

SECTION 5. PERMANENT EXEMPTION

Under the 1978 amendments, when an exemption is granted by the Endangered Species Committee, the exemption is a permanent, blanket exemption for all species for purposes of completing the action, provided that a biological assessment has been conducted under section 7(c). Section 7(c) requires a Federal agency to conduct a biological assessment for an action for which no construction had begun when the amendments became effective.

Under present law, however, if the Secretary finds that such a permanent exemption would result in the extinction of a species, the Endangered Species Committee would have 30 days to determine whether the exemption should be granted, notwithstanding the Secretary's determination.

Legislative history clearly states that it was the intent of Congress that this provision should apply to both new and ongoing projects. In addition, Congress intended that the permanent exemption would be reconsidered only in instances where the permanent exemption would cause the extinction of a species which was (1) discovered subsequent to the time the permanent exemption was granted, and (2) was not the subject of consultation or had not been identified in the biological assessment. This intent, however, is not clear in Public Law 95-632. Accordingly, the committee bill clarifies these points. It also authorizes the preparation of biological assessment on actions for which a biological assessment is not currently required.

It is important that before it grants a permanent exemption the Endangered Species Committee be fully aware of the impacts of the Federal action on all listed species. It is essential, therefore, that a Federal agency's biological assessment and consultation with the FWS and NMFS be as complete as practicable, so as to provide the committee with all relevant information concerning listed species in the area impacted by the activity and the anticipated impacts. For the same reason, it is essential that all reasonable and prudent alternatives to the project be considered during the course of the consultation process. Although a permit or license applicant should be given an opportunity to participate in the consultation process, the committee recognizes that the ultimate responsibility for compliance with section 7 remains with the Federal agency.

SECTION 6. CONSULTATION ON PROPOSED AND CANDIDATE SPECIES

During the subcommittee's hearings, the General Accounting Office recommended that Federal agencies be required to consult with FWS and NMFS not only on species which have been officially listed as threatened or endangered, but also on species which have been proposed for listing, and on candidate species which the Service has been petitioned to consider for listing. Consultation results in the issuance of a biological opinion by FWS or NMFS which states whether the proposed Federal action is likely to jeopardize the existence of the species. If a finding of jeopardy is made, the project agency may make no irreversible or irretrievable commitment of resources unless consultation yields an acceptable way to complete the proposed action, or until the section 7 exemption process is completed.

While the intent of the GAO amendment is to insure early identification of potential species/Federal action conflicts, mandating consultation on all candidate species is impractical, since the service receives hundreds of petitions to list species, many or most of which do not need the protection provided by the Endangered Species Act and are therefore never listed.

It is reasonable, however, to require consultation on proposed species, since such species will have been the subject of substantial review and consideration by the Secretary and there is some likelihood that they will be formally listed as endangered or threatened. It is essential, however, that work on a project not be unduly delayed while the Secretary decides whether to list the proposed species. Therefore, the committee bill requires consultation on proposed species, but requires that if jeopardy is determined, the Secretary must within 90 days either complete or withdraw the proposed listing and critical habitat designation notwithstanding the requirements contained in section 4(b)(4) and 4(f). Nonetheless, it is expected that the Secretary comply with these requirements to the fullest extent practicable given the 90-day limitation.

SECTION 7. SUBMISSION OF AN EXEMPTION APPLICATION

The act presently states that an exemption application to be submitted to the Secretary within 90 days after consultation has been completed and a biological opinion issue. Applications eligible for reviews by the Review Board and the Endangered Species Committee would be those which in the Secretary's judgment meet the criteria for an eligible application set forth by the Secretary pursuant to section 7(f). When a permit or license is involved, however, the 90 day limit could expire before the permitting agency decides to deny the application, thereby foreclosing the applicant's opportunity to apply for an exemption. The committee bill clarifies that where a permit or license is involved, the exemption applicant has 90 days after final agency action on a permit or license to apply for an exemption. This provision is intended to clarify provisions of existing law with respect to the timeliness of an exemption application where a permit or license applicant is involved. A permit or license applicant, as defined by section (3) (12) of the act, is any person whose application for a permit or license has been denied primarily because of the application of section 7.

It is not the committee's intent in this amendment to permanently preclude the review of any exemption application currently pending before the Endangered Species Committee or the Review Board. The committee reiterates, however, the intent of the 1978 amendments that an application shall not be considered by the Review Board until final agency action has been taken on the permit or license application.

OTHER POINTS

There are several points concerning the Endangered Species Act which should be addressed. Although these matters do not warrant amendments to the law, some clarification would be useful.

LISTING OF POPULATIONS

In testimony before the Resource Protection Subcommittee on April 3, officials from the General Accounting Office recommended that the subcommittee consider an amendment to the definition of species currently contained in the act which would prevent the FWS from listing geographically limited populations of vertebrates as threatened or endangered. It is the GAO's contention, based on a draft report which it has conducted on the administration of the act, that FWS has interpreted the term "species" to include any population of the animal, regardless of its size, location or total numbers. According to the GAO, this could result in the listing of squirrels in a specific city park, even though there is an abundance of squirrels in other parks in the same city, or elsewhere in the country.

The FWS and NMFS, on the other hand, oppose such a change on the basis that it would severely limit their ability to require the appropriate level of protection for a species based on its actual biological status. For instance, under the GAO proposal FWS would be required to provide the same amount of protection for the bald eagle population in Alaska, which is healthy, as for the bald eagle population in the conterminous states, which is endangered. One of the weaknesses of the 1969 act which was corrected in the 1973 amendments was the inability of the FWS to adopt different management practices for healthy, threatened or endangered populations.

The committee agrees that there may be instances in which FWS should provide for different levels of protection for populations of the same species. For instance, the U.S. population of an animal should not necessarily be permitted to become extinct simply because the animal is more abundant elsewhere in the world. Similarly, listing of populations may be necessary when the preponderance of evidence indicates that a species faces a widespread threat, but conclusive data is available with regard to only certain populations.

Nonetheless, the committee is aware of the great potential for abuse of this authority and expects the FWS to use the ability to list populations sparingly and only when the biological evidence indicates that such action is warranted.

TELLICO DAM

The committee did not approve an amendment which was introduced during markup on May 9, 1979 to exempt from the Endangered Species Act the Tellico Dam and Reservoir, located on the Little Tennessee River near Tellico Plains, Tenn.

The Tennessee Valley Authority (TVA) initiated construction on the Tellico Dam in 1968. In March 1977, however, the 6th Circuit Court of Appeals ruled in *Hill* v *TVA* that work on the project, which was 90 percent complete, would have to be terminated since its completion would destroy the critical habitat of the snail darter, an endangered fish. This decision was upheld by the Supreme Court in June, 1978.

In its first action under a special, expedited review procedure established by Public Law 95-632, the Endangered Species Committee, by unanimous vote, ruled that the Tellico Dam could not be completed as originally planned by TVA, because the project did not qualify for an exemption under the criteria set forth in the law. As a result of the Endangered Species Committee's actions, an amendment to exempt the dam from the act was proposed during committee markup.

The law requires that before the Endangered Species Committee may grant an exemption for a Federal action, it must determine, first, that there are no reasonable and prudent alternatives to the action, and second, that the benefits of the action clearly outweigh the benefits of alternative courses of action which are consistent with conserving the species. In a December 1978 report entitled "Alternatives for Completing the Tellico Dam," TVA identified a reasonable and prudent alternative to the dam, known as the river development proposal. Under this plan, a portion of the dam would be removed and the river would remain free-flowing. The river basin could then be developed for agriculture, forestry, light industry, and other uses compatible with the conservation of the snail darter.

Furthermore using largely TVA's own calculations, which had been confirmed by outside sources, the Endangered Species Committee determined that the annual benefits of the dam, set at −.72, did not clearly outweigh the benefits of the river development alternative, determined to be −1.2. For these reasons, the Endangered Species Committee determined that the dam did not meet the requirements set forth by law and therefore denied the exemption.

Proponents of the dam claim the Endangered Species Committee did not accurately calculate the costs and benefits of the Tellico Dam and the river development alternative. Those who support the Endangered Species Committee's decision, on the other hand, point out that the benefit-cost information contained in the Endangered Species Committee's staff report, which formed the basis for the Tellico decision, was derived largely from TVA's own calculations. Furthermore, before it was presented to the Endangered Species Committee, the report was reviewed and concurred in by the staffs of each permanent committee member, including that of Charles Schultz of the Council of Economic Advisors. The report has since been circulated to and has been praised by numerous economists throughout the country. Proponents of the dam also argue that a viable population of snail darters has been established on the Hiawasee River and that the fish is thus no longer endangered. This assertion, however, is disputed by biologists from the Fish and Wildlife Service.

It is the view of the committee that these matters were considered adequately and fully by the Endangered Species Committee during their deliberations on the Tellico exemption. Furthermore, section 7(n) of the Endangered Species Act, which provides for judicial review of decisions made by the Endangered Species Committee, anticipated that the courts, and not the Congress, would be the appropriate forum for addressing these concerns. A petition for review of the Tellico decision has already been filed with the 6th Circuit Court of Appeals in Cincinatti.

Congress developed the exemption process pursuant to Public Law 95–632 after 2 years of intensive consideration and debate, during which time it was established that conflicts between Federal actions and endangered species would very likely increase in the future. It is essential to avoid ad hoc congressional review of, and specific exemptions for, these actions, since Congress has neither the time nor the expertise to evaluate the many biological, engineering, economic, and other technical issues connected with the consideration of an exemption. Perhaps the strongest aspects of the new process is that it mandates close cooperation between a Federal action agency on the one hand, and the FWS and NMFS on the other hand, since an action cannot be considered for an exemption unless every effort has been made to resolve the conflict.

Had the Environment and Public Works Committee approved an exemption for the Tellico Dam, thereby nullifying the decision of the Endangered Species Committee, it would have seriously undermined the new process before it had been given a reasonable chance to work, and would have discouraged good faith attempts by Federal agencies to minimize these conflicts. The action of the Endangered Species Committee on the Tellico project has not been shown to have strayed from the statutory mandates under which it operates so as to justify congressional revision of the decision. For these reasons, the Committee decided not to approve the exemption.

ROLLCALL VOTES

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There was one rollcall vote during the committee's consideration of the bill. This was on an amendment to exempt the Tellico Dam from the Endangered Species Act. The amendment was defeated by a vote of 10–3.

EVALUATION ON REGULATORY IMPACTS

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill does not add to or reduce the regulatory authority provided by existing law.

The bill has no impact on the personal privacy of individuals.

The bill has no impact on paperwork of Federal agencies.

There is no specific economic impact of the bill.

The bill has no impact on recordkeeping requirements.

ESTIMATE OF COSTS

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in this report of the committee's estimates of the costs of the reported legislation, together with estimates prepared by any Federal agency. S. 2899 provides a total authorization of $75 million for the Department of the Interior, $9 million for the Department of Commerce and $1.8 million for the Endangered Species Committee for fiscal years 1980–1982. This compares to an estimate of $19.3 million by the Interior Department, $2.4 million by the Commerce Department, and $600,000 by the Endangered Species Committee for fiscal year 1980, and such sums as may be necessary for fiscal year 1981 and 1982.

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. The report follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 11, 1979.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Environment and Public Works, U.S. Senate, 4202 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Endangered Species Act Amendment of 1979.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director*.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: The Endangered Species Act Amendment of 1979.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 9, 1979.

4. Bill purpose: The bill authorizes the appropriation of $600,000 for the Endangered Species Committee for each of the fiscal years 1980, 1981 and 1982. This committee reviews applications from federal agencies to determine whether to approve a Federal action that jeopardizes the continued existence of any endangered species or results on the destruction of the endangered species' habitat.

The bill authorizes the appropriation of $23.5 million for fiscal year 1980, $25 million for fiscal year 1981 and $27 million for fiscal year 1982 for the U.S. Fish and Wildlife Service (USFWS) to carry out its responsibilities under the Endangered Species Act. These responsibilties include the determination of endangered species, the development and implementation of plans for the survival of endangered species, and the determination of whether a Federal action jeopardizes the existence or habitat of an endangered species. The National Oceanic and Atmospheric Administration (NOAA) is also authorized $2.5 million for fiscal year 1980, $3.5 million for fiscal year 1981 and $4.0 million for fiscal year 1982.

In fiscal year 1979, $600,000 was authorized for the Endangered Species Committee, $23 million for the USFWS and $2.5 million for the NOAA activities covered by this bill.

5. Cost estimate:

	Millions
Net additional authorization:	
Fiscal year:	
1980	1.3
1981	29.1
1982	31.6
1983	----
1984	----
Estimated outlays:	
Fiscal year:	
1980	1.2
1981	26.3
1982	31.3
1983	3.2
1984	-----

The costs of this bill fall within budget function 300.

6. Basis of estimate: For fiscal year 1980, the net additional authorization represents the net change to authorizations already existing. The bill increases the 1980 authorization for the USFWS from $12.5 million to $23 million, and for the Endangered Species Committee from $300,000 to $600,000. The $2.5 million authorized in this bill for NOAA in fiscal year 1980 represents a decrease from the existing authorization of $12.5 million. (The 1979 NOAA appropriation for this

purpose is $2.3 million; the President's budget request for 1980 is $2.4 million.) The 1980 auhorization level also includes $500,000 for implementation of the recovery program for the California condor.

For the purpose of this estimate, it is assumed that the full amounts authorized will be appropriate. Outlays are estimated by applying a 2-year spendout rate to the level of appropriations authorized for NOAA, USFWS and the expenses of the review committee. The 2-year spendout is estimated to be 90 percent the first year and 10 percent the second year, based on consultation with NOAA and USFWS.

7. Estimate comparison: None.

8. Previous CBO estimate: A cost estimate was prepared on May 9, 1979 for the corresponding House bill, HR. 2218, as ordered reported by the House Committee on Merchant Marine and Fisheries. That bill provided a higher authorization level in fiscal year 1980, but lower authorizations for fiscal years 1981 and 1982.

9. Estimate prepared by: Jim Manaro.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

ADDITIONAL VIEWS OF MR. BAKER

Over the last few years the Endangered Species Act has occupied a considerable amount of the working time of the Environment and Public Works Committee's Subcommittee on Resource Protection. I have been particularly interested in the action of the committee on this subject due to the act's impact on the Tellico Dam project located in my home State of Tennessee and because I am convinced that unless some reasonable flexibility is incorporated into this legislation that it will be misused in the future. Such misuse may well jeopardize the ability of the act to meet its legitimate objectives.

Legislation sponsored by Senator Culver and me—and enacted by the Congress late last year—established a review committee to rule on the relative merits of construction projects and endangered species in cases where there was an "irresolvable conflict" between the two.

One such controversy arose in Tennessee 4 years ago, pitting the Tellico Dam—already 80 percent complete at the time—against the newly-discovered snail darter, which was then thought to exist in only a single stretch of the Little Tennessee River.

Evidence gathered since this issue was first joined indicates that the "irresolvable conflict" between the dam and the snail darter turns out not to be irresolvable at all.

The snail darter was found to thrive in at least two other locations in Tennessee. Indeed, he seems to be doing much better in the two other locations than in the one where he was first discovered.

Let me stress that this is fine with me. I have nothing personal against any snail darter. May their tribe increase. But just as the snail darter became a symbol of the inflexibility of the Endangered Species Act and led to the establishment of this review committee in the first place, the snail darter has now become the symbol of the excessive latitude which the review committee has claimed for itself.

The committee undertook to decide this case despite the evidence of studies by the Tennessee Valley Authority and the U.S. Fish and Wildlife Service which found that the Tellico Dam site is not the only habitat in which the snail darter now thrives. This information should, if objectively considered, have indicated that no irresolvable conflict thus exists, and therefore that the jurisdiction of the review committee should not apply in this case.

Having ignored or at best given only a summary analysis to this information and claimed that jurisdiction anyway, the review committee then ruled that the Tellico Dam should not be completed—even though it is 95 percent complete already. The reasons the committee cited were not environmental reasons but economic reasons—and that reasoning was in itself false. The "river alternative" recommended by the committee will cost more to complete than the dam project as planned, and will provide fewer benefits.

Clearly the committee has exceeded its charter in this case. Clearly the Congress did not intend that the committee should rule on the general economics of public works projects even after environmental concerns had been satisified. Clearly we must establish the limits of this committee's power—and the formal removal of the Tellico Dam case from the committee's jurisdiction is the most obvious first step in that process.

I am seriously concerned that if present trends continue, the Endangered Species Act will be diverted from its original intent as the means of protection and management of endangered species and be used instead as a convenient device to challenge any and all federal projects.

The science of taxonomy, as we have learned too late, offers opponents of Federal public works projects a virtually limitless arsenal of weapons with which to do battle.

We who voted for the Endangered Species Act with the honest intention of protecting such glories of nature as the wolf, the eagle, and other natural treasures have found that others with wholly different motives are using this noble act in conjunction with sciences present inability to place a relative value on any particular species for merely obstructive ends.

That is precisely what has happened in the case of *Snail Darter* v. *Tellico Dam* and if this perversion of the law is allowed to continue, the law itself will soon stand in jeopardy.

We must not let that happen. It need not happen if rigidity gives way to reason and if authority is exercised with prudence and restraint.

These were my goals in offering in committee my amendment to exempt the Tellico Dam. I am sure that many of my colleagues in the Senate share my concerns and would agree that if the Endangered Species Committee could not after their review exempt the Tellico project that few if any of the so-called irresolvable conflicts which are certainly going to arise in the implementation of this act are going to be given fair and reasonable consideration for an exemption. I think that my amendment would send a message to the Endangered Species Committee that the Congress intends this type consideration in the future.

HOWARD H. BAKER, Jr.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection (f) of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

[From the Congressional Record, June 13, 1979]

SENATE CONSIDERATION AND PASSAGE OF S. 1143

ENDANGERED SPECIES ACT AUTHORIZATIONS

The **PRESIDING OFFICER**. Under the previous order, the Senate will now proceed to the consideration of S. 1143, which the clerk will state by title.

The assistant legislative clerk read as follows:

> A bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes.

The Senate proceeded to the consideration of the bill.

The **PRESIDING OFFICER**. Debate on this bill is limited to 1 hour, to be equally divided and controlled by the Senator from Iowa (Mr. Culver) and the Senator from Tennessee (Mr. Baker), with 30 minutes on any amendment in the first degree, with 20 minutes on any amendment in the second degree, and with 15 minutes on any debatable motion, appeal, or point of order.

Mr. **ROBERT C. BYRD**. Mr. President, I ask unanimous consent that no call for the regular order bring this bill down.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

Mr. **ROBERT C. BYRD**. Mr. President, I ask unanimous consent to proceed for 2 minutes on other matters.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

Mr. **CULVER**. Mr. President, the pending legislation before the Senate is one, I am afraid, which is threatening to become an annual event, the reauthorization of the Endangered Species Act.

Although the Senate provided a 3-year authorization last year, the conference committee accepted the House proposal for a 1½-year extension. Because funds expire halfway through fiscal year 1980, reauthorization legislation must, therefore, be considered again this year.

This bill, S. 1143, would provide for a 3-year extension at levels of $23 million in fiscal year 1980, $25 million in fiscal year 1981, and $27 million in fiscal year 1982 for the Department of the Interior.

The Commerce Department authorization totals $2.5 million for fiscal year 1980, $3 million in fiscal year 1981, and $3.5 million in fiscal year 1982.

In addition, the legislation continues through fiscal year 1982 the current annual authorization of $600,000 for the Endangered Species Committee. Hopefully, the ink will be dry on this bill before we once again debate this issue.

The Endangered Species Act is one of the most significant and profound laws, in my judgment, ever to be adopted by our Nation. Its passage was a recognition, and a woefully late one, that our development activities were responsible for destroying forms of life which were present as a result of a process which began with the first appearance of life on Earth 3½ billion years ago.

All species present today have been shaped by those forces, and they have evolved and developed over a period of time in which mankind's existence has only been a recent development.

Species and life forms appear, flourish for a time, and then disappear forever. This is a natural process and one we must recognize as we consider this legislation today. Events shaped by our industrialization over the past few hundred years have, however, led to a sharp acceleration in the rate of extinction to the point where the natural processes may be increased by a factor of hundreds or even thousands.

The chilling tragedy of this massive loss of species from our ecosystems and biosphere will never be fully understood, lost are some whose existence we never realized, and whose contributions to science and mankind will never be known.

The Endangered Species Act is a first, a belated, and a noble attempt to reduce these losses by requiring that our citizens and our Government be aware of threatened or endangered species, and that they plan future activities to prevent these losses. The act has without question already had a positive effect in this regard. In the past 5 years, it has probably been responsible for saving several species from extinction.

The Endangered Species Act was reauthorized last year after considerable debate, both in the Committee on Environment and Public Works and on the Senate floor. The act was substantially amended, resolving the act's shortcomings while leaving it strong and viable.

As my colleagues may recall, one of the principal amendments adopted provides a rational and responsible mechanism for resolving intractible conflicts under section 7 of the act. This section requires consultation between the construction agency and the U.S. Fish and Wildlife Service (FWS), which implements the Endangered Species Act. This consultation mechanism has led to the resolution of most potential conflicts which have arisen under the act since 1973.

However, a limited number of conflicts has not been resolved through consultation, and it appears likely that this will continue to be the case. In anticipation of the intensifying pressure on Congress to weaken or repeal the act as a result of these problems, Senator Baker and I cosponsored last year an amendment to equitably resolve intractible conflicts while at the same time assuring maximum protection for all endangered species.

Briefly, the Culver-Baker amendment established a seven-member Endangered Species Committee composed of the heads of six Federal agencies and a representative of the affected State or States. The committee arbitrates those conflicts which cannot be resolved through consultation.

It does not interfere with the consultation process set up in the 1973 act. Only those conflicts which cannot be resolved by consultation are brought before the Endangered Species Committee.

The Endangered Species Committee can exempt a project from compliance only if certain criteria have been met. These criteria require the committee to evaluate social, cultural, economic, and other benefits of the project as well as the ecological, educational, scientific, and other benefits of alternatives which would conserve the species. The provision is careful not to undermine existing mechanisms to resolve conflicts and in fact stimulates the resolution of impasses by requiring good faith consultation between the action agency and the U.S. Fish and Wildlife Service.

I am pleased to announce that this process is working well. The Endangered Species Committee has met to consider exemptions for two projects, the Grayrocks Dam in Wyoming and the Tellico Dam in Tennessee. After careful consideration the committee voted unanimously to exempt the Grayrocks project, provided certain measures are taken to protect the affected species, the whooping crane. The committee also voted unanimously not to exempt the Tellico Dam, finding that the benefits of completing the project did not clearly outweigh the benefits of alternatives which were consistent with protecting the endangered snail darter.

The Endangered Species Committee is providing just what it was intended to—a rational mechanism for resolving conflicts between protection of endangered and threatened species and other legitimate national goals and priorities. And, it provides a general solution to these problems, thereby avoiding ad hoc exemptions and the emasculation of the act as a result of the short-term pressures which, overlook the importance of this law and the species it protects.

Mr. President, it is not possible to overstate the importance of keeping the Endangered Species Act strong. Enlightened self-interest requires that we do our best to preserve these species, which have evolved over billions of years.

I wish before concluding, Mr. President, to express my appreciation to all members of the subcommittee who have worked on this reauthorization effort, but particularly to single out the distinguished Senator from Rhode Island (Mr. CHAFEE), who has been indispensable in the way he has conscientiously involved himself in this subject matter over the last 2 years, and particularly valuable in the contribution he has made in fashioning the legislation before us today.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first I would like to pay tribute to the chairman of our subcommittee, the senior Senator from Iowa (Mr. Culver). He has really been a rock in his steadfastness, his consistency, and his intense interest in this Endangered Species Act. I think all of us in the Senate, and indeed in the country, owe him a debt of gratitude for his tremendous interest in this field, which, as he mentioned, is so important not just to us but to future generations.

Mr. President, only 8 months have passed since Congress last reauthorized the Endangered Species Act. I must say that for me and to others, I am sure, the 1978 amendments were somewhat of a painful process. As Senators will recall, the chief action we took last year was to provide a mechanism under section 7 of the act for the resolution of these seemingly irresolvable conflicts between, on the one hand, the endangered species, whether it is a flora, a fauna, or whatever it might be, a magnificent conch or a tiny snail darter, and Federal actions, particularly construction projects, such as a reclamation project, dam, or whatever it might be. A seven-member Endangered Species Committee, composed of Federal agency heads—Departments of the Interior, Agriculture, Defense, Commerce, EPA, Council of Economic Advisers—and a representative of the States involved, was established to review each conflict and determine whether the project should be exempted, modified, or terminated. Before a project can be considered by the committee, a review board must determine that the construction agency has consulted with the Fish and Wildlife Service or the National Marine Fisheries Service, and that all alternatives have been examined.

During consideration of last year's bill, I offered amendments to the Endangered Species Exemption Committee proposal, to tighten up the process. Some suggestions were voted down, but others were accepted in our Environment and Public Works Committee. I felt strongly at that time, and still do, that a strong Endangered Species Act is absolutely necessary, whether we are talking about spindly legged spiders or the majestic, easily admired bald eagle.

The Congress having gone through this detailed reauthorization process late last session, I firmly believe that we need to give the 1978 changes a chance to work. Indeed, this is the spirit of the committee bill pending before us, as ably summarized by subcommittee Chairman Culver in his opening statement.

The Endangered Species Act Amendments of 1978 extended through March 31, 1980, budget authorization for the Secretary of the Interior and the Secretary of Commerce to carry out their responsibilities to protect endangered species. The bill now before us extends authorization for the act through fiscal year 1982. It would provide $23.5 million for fiscal year 1980, $25 million for fiscal year 1981, and $27 million for fiscal year 1982 for Interior's Fish and Wildlife Service to administer its responsibilities under the act.

The Commerce Department authorization under this bill comes up to $2.5 million in fiscal 1980, $3 million in fiscal 1981, and $3.5 million in 1982. Is it not refreshing, Mr. President, that when we say $3.5, we are not talking $3.5 billion, but we are talking about $3.5 million?

Finally, the current annual authorization of $600,000—imagine this, what small potatoes we come in for—for the Endangered Species Committee is continued through fiscal year 1982.

The Environment and Public Works Committee believes that all of these authorization levels are necessary to carry out both the act's original mandates and the new requirements under the 1978 amendments.

One of the new responsibilities under the 1978 amendments is the implementation of the species recovery plans. I think this is of some interest, Mr. President, particularly for those from the West. During the reauthorization hearings we learned that additional support is needed to carry out a proposed recovery plan for one of America's great species, the California condor. I was astonished to discover that not more than 40 of these magnificent birds still remain. I think they have a wingspread of something like 12 feet.

It is my firm belief that an intensive program of habitat protection and captive breeding is necessary to save North America's largest bird. Senator Culver and I have both received letters from interested ornithologist groups all over the world regarding the plight of the condor. We had testimony before the committee from the National Audubon Society. I am pleased to state that section 2 of the bill before us specifically authorizes the necessary funds for a recovery plan directed toward this species, namely, the California condor.

Since enactment of the 1978 amendments, the Endangered Species Committee has taken two actions, both of which the chairman touched on briefly. On February 7, 1979, they voted unanimously to exempt the Grayrocks Dam and Reservoir project on the Laramie River in Wyoming, and at the same time they voted unanimously not to exempt the TVA Tellico Dam from the Endangered Species Act.

I must say that exemptions, in general, from the Endangered Species Act cause me concern. But I do believe that the Endangered Species Committee process is a preferable one to individual congressional exemptions. I do not think every exemption should come here to the floor of the Senate, project by project. Consultation requirements and other criteria are better maintained under the committee process.

So along with our distinguished chairman, Senator Randolph, and our subcommittee chairman, the distinguished Senator from Iowa, Senator Culver, I urge my colleagues to favorably consider this reauthorization legislation for a most important program.

I reserve the remainder of my time, Mr. President.

AMENDMENT NO. 248

Mr. CULVER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an unprinted amendment numbered 248.

Mr. CULVER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 14, strike "$3,500,000" and insert in lieu thereof "$3,000,000" and on line 15, strike "$4,000,000" and insert in lieu thereof "$3,500,000."

On page 2, line 19, insert after "appropriated" a comma and the phrase "beginning October 1, 1979,:" and on line 21, after the word "condor" and before the period, insert ", which sum shall be available until expended".

On page 4, line 8, strike "4(b)(4)".

Mr. CULVER. Mr. President, this is a committee amendment, perfecting and technically correcting certain aspects of the bill in three places. The first part of the amendment corrects two errors in the authorizations for the Commerce Department. In the bill, the Commerce Department authorization is $3.5 million for fiscal year 1981 and $4 million for fiscal year 1982. The correct amounts, which appear in the committee report on this bill, are both $500,000 lower, $3 million for 1981 and $3.5 million for 1982.

The second part of this committee amendment is a technical change making it clear that the California condor authorization is for fiscal year 1980 and subsequent years until the money is expended. As the language appears in the bill, it could have been interpreted to mean that the authorization was for fiscal year 1979 only.

Finally, Mr. President, the third part of the amendment corrects a reference in the bill. As printed, the bill would allow the Secretary to make an emergency listing of a species without notifying the States or allowing them to comment. This was not the intent of the committee. The committee intended only that the Secretary be exempt under these circumstances from paragraph 4(b)(4), which requires that an economic analysis be done before determining critical habitat.

Mr. President, I know of no objections to the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. CHAFEE. I have no objection.

Mr. CULVER. I yield back the remainder of my time on the amendment and move the amendment.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield back the remainder of his time?

Mr. CHAFEE. I do, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 249

Mr. BAKER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Tennessee (Mr. BAKER), for himself and Mr. SASSER, proposes an unprinted amendment numbered 249.
>
> On page 4, after line 24, insert the following new section:
>
> SEC. 8. Section 7 of the Endangered Species Act (16 USC 1536) is amended, by adding at the end thereof a new susbection (r) to read as follows:
>
> "TELLICO DAM AND RESERVOIR PROJECT
>
> "(r) The provisions of this Act shall not apply with respect to the construction and operation of the Tellico Dam and Reservoir Project in Tennessee. The harassment, harm, killing, or wounding, if any, of any endangered species or threatened species attributable to the construction or operation of such project shall not be deemed to be a taking of any endangered species within the meaning of section 9(a)(1) of this Act or the taking of any threatened species if a prohibition against the taking thereof is imposed by regulations pursuant to section 4(d) of this Act.".

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, this is a stay order amendment. I will not take a long time. This is the language of the exemption provision for the Tellico Dam in Tennessee that was adopted last year in the House of Representative during their consideration of the Endangered Species Act.

We did not take this approach on the Senate side but instead decided to set up a review committee to consider the relative merits of the endangered species versus the continuation of a particular Federal project. I now believe I made a mistake in taking that approach and I am standing here to say so.

In the final analysis, what that committee did when it made its decision on Tellico, in my judgment, was plain foolish. They did not make a balancing judgment between the alleged endangered species and the project. The chose to ignore the status of the darter and base their decision on the economic desirability of the project.

The same authority of the Congress that set up the review board, of course, could abolish the review board. Frankly, that was my first intention because I think they did act in a way contrary to the intention of the Congress. But I was persuaded, based on their performance in one other case, that there was some usefulness in continuing that review procedure. However, in the case of Tellico I have no alternative except to return to the original source of authority, which is the Congress itself, and address the question exactly as our friends in the House of Representatives did last year. That is to exempt the dam.

Mr. President, some may say, "Why should the Tellico Dam have special treatment?"

I suppose that is the fundamental question I certainly would ask that question if I were not familiar with the project. Let me outline a few circumstances.

To begin with, the Tellico Dam was authorized before the Endangered Species Act was even a gleam in anybody's eye.

Much of the appropriation for this project was made before the Endangered Species Act was ever thought of, as far as I know. The dam was put to contract and under construction and, I believe, some 80 percent completed when the act was originally passed. The dam was 80 percent complete at the time the Endangered Species Act was passed! What we should have done, I suppose, was put a grandfather clause in the act so it did not cover things like dams or projects that were already over 80 percent completed, playing under the old rules. But we did not do that. That was a mistake, too.

Oddly, enough, nobody ever heard of the snail darter, either, at the time this dam was started. When the snail darter was discovered somebody—I rather suspect intentionally—set out to find a species to stop this dam using this act.

Thus, the snail darter was discovered after this dam was 95 percent complete—more specifically the species was listed and its critical habitat was designated at the time this dam was 95 percent complete.

So I have the anomaly before me of a dam that was authorized, the money appropriated, construction undertaken, 80 percent complete before the act was passed, and 95 percent complete before they got around to discovering the snail darter. What I am trying to do, in effect, is grandfather the project. What I am doing is what that review committee should have done. One of the most distinguished daily newspapers in this city said that Senator Baker was mad about the result of the review committee that he established. Mr. President, they do not have any idea how upset I got about that decision, because I was the one responsible for it. I do not like admitting I made a mistake, but I flat made a mistake. I should have done what the House of Representatives did overwhelmingly; that is, simply exempt the dam.

However, I am here to say, Mr. President, that I support the Endangered Species Act, I am going to vote for final passage. I helped write the thing. I have served since the day I came to the Senate on the Committee on Environment and Public Works. I do not think I have to apologize to anybody for my environmental record, and I have the scars and bruises to prove it.

At times such as this I am reminded of what one of my staff said to me, after we passed the strip mining bill, "Senator Baker, you have some of the maddest of friends and some of the strangest new ones I ever saw."

Mr. President, I have no apology to make for my commitment to environmental legislation, or for my actions with regard to this set. But I simply cannot stand idly by and see a stultification of commonsense, to see this act stop a dam that was finished, virtually, before the act was passed and before the fish was discovered. I am not going to belabor the issue. I think that is the whole point. I think the dam ought to be exempted. I think we ought to keep the review committee for reviewing future conflicts, I think we ought to keep the act. But the review committee ought to understand that when a dam was started before this act was passed, we ought to have a consideration of practicality and commonsense.

Goodness knows, there is little enough commonsense in this Government of ours without flaunting our failures to act where we give them the statutory opportunity.

I see my colleague from Tennessee (Mr. Sasser) on the floor. Before I use up my time, if I have not already, I should like to yield to him if he cares to speak.

Mr. SASSER. I thank my distinguished colleague for yielding to me, Mr. President. I wish to associate myself with the remarks he has made here this afternoon.

Mr. President, I speak in support of Senator Baker's amendment to this bill to reauthorize the Endangered Species Act. I share my colleague's support and recognition of the benefits of this act. I fully appreciate the need for the continuation of this act to protect certain species of plants and animals which might otherwise become extinct. However, I continue to feel that the history surrounding the Tellico project in our State does not warrant the application of the Endangered Species Act.

Today's consideration of the Tellico project and the impact the Endangered Species Act should have over its future marks a major decision for this body. Several years ago, an earlier Congress passed the Endangered Species Act. This legislation was broadly written and has been broadly interpreted to halt the construction of public works projects which were already underway at the time that act was signed into law. I further point out that the same Congress and each succeeding Congress have passed appropriations bills which provide funds to continue and complete these projects.

While I was not a Member of that original Congress which approved the Endangered Species Act, I do not believe that most of the Members who voted for that bill ever intended it to be used to halt water resources development. I do not believe that those Members had any idea that the act would be used to halt congressionally mandated projects.

Last year, I supported the committee's amendment to the Endangered Species Act to create a committee to deal with conflict situations such as the Tellico project. In lending my support to this concept, I emphasized my view that the commmittee should give special consideration to the degree of completion of the project involved. I continue to feel that, as the state of completion of the project advances, it is not reasonable or prudent to consider certain alternatives as options in completion of the project. In the case of Tellico, I do not feel that the option to abandon the use of this dam for power and flood control should be considered an option.

I remind my colleagues that, during the last Congress, the reauthorization of the Endangered Species Act which was passed by the House of Representatives contained a specific exemption for the Tellico project. The basis for the House exemption was the advanced state of the project's construction at the time the act's requirements were applied to this project.

I want all of my colleagues here to be aware of the history of the Tellico project. The dam was begun in 1967, 6 years before the Endangered Species Act became law. The snail darter species which has become such a familar symbol in these debates, was not discovered in the Little Tennessee River until 1975, 8 years after the project had begun.

I agree with my colleague's observation that perhaps there was, indeed, an effort to discover something in order to stop, slow, or delay this project.

Today, the Tellico project stands 95 percent completed—with more than $100 million of the public's money spent on the preparation of this dam and reservoir. The TVA has successfully transplanted the endangered snail darter to a similar habitat in the Hiawassee River. I might say parenthetically, Mr. President, that I have heard from a number of friends and farmers in the eastern part of Tennessee that there are snail darters of a similar variety in creeks all around.

And the project continues to have the support of the local area residents who originally gave up their land to the TVA for the benefit of the project.

Mr. President, I have supported the continuation of this project since coming to the Senate more than 2 years ago. I have also supported continuation of the beneficial aspects of the Endangered Species Act. I ask my colleagues to consider the factors I have outlined today in voting for Senator Baker's amendment. It is crucial that we get beyond this confrontation by providing an exemption for the Tellico project to stop this retroactive application of the Endangered Species Act.

Mr. BAKER. Mr. President, will the Senator yield to me long enough to ask for the yeas and nays?

Mr. SASSER. I yield to my distinguished senior colleague.

Mr. BAKER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SASSER. Mr. President, as a matter of fact, polls taken in the local area indicate that some 90 percent of the local residents support the Tellico Dam project.

I want to reaffirm what my colleague said with regard to the actions of the Endangered Species Committee. I was shocked, quite frankly, to read in the newspaper that this Commission took upon itself the responsibility of denying completion of this project, not based on the Endangered Species Act or not based on a species being endangered by the completion of the project, but rather, it denied continuation and completion of this project based on the theory that the cost-benefit ratio, as I understand it, was not satisfactory; that the project was not economically sound. Mr. President, I thought that those were decisions that we made here in Congress.

I strongly support my senior colleague's efforts to seek an exemption to the Endangered Species Act for the Tellico project.

I might say Mr. President, that I fully support the Endangered Species Act, and I intend to support it today. But I think we must also be governed by a rule of reason. This project was already started and underway well before the passage of the Endangered Species Act. As to the fact that the project is 95 percent completed, I think reason compels that we go forward with the ultimate completion.

Mr. HELMS. Will the Senator yield to me for just a minute?

Mr. SASSER. I yield to the Senator from North Carolina.

Mr. Helms. Mr. President, I compliment both Senators from Tennessee. They have a clearly identifiable interest, in the geographical sense, in this matter, but those of us from North Carolina recognize the absolute essentiality of the completion of the Tellico Dam project.

Mr. President, completion of the Tellico Dam project is important for two major reasons.

First, there are significant benefits to derive from its completion. Proposed industrial development could add 7,900 jobs over a period of years to an area in desperate need of employment opportunities to halt its long history of outmigration. The shoreline would provide new desirable homesites and demand for housing, encouraging growth in that industry. In fact, TVA plans project 7,400 new housing units for the area. Other TVA plans call for 10,600 acres of forested lands to be managed on a sustained yield basis and for 2,000 acres of land for agricultural uses.

It is said that these benefits are all present in the TVA alternative river proposal. However, TVA studies have shown that the reservoir alternative includes more residential, industrial and forestry land use than the river alternative. These benefits are important, Mr. President, but crucial is the energy benefit—a benefit not available under the alternative. The average yearly production would be 200 million kilowatt hours of electricity, more electricity than is produced by about one-half of the dams on the TVA system.

This power would be generated by increased waterflow through the existing Fort Loudin turbines—turbines installed years ago with extra capacity in anticipation of the development of the Tellico Dam project. Therefore, this would be clean power utilizing already existing equipment to its fullest. How can we, in this energy resource crisis, refuse to allow TVA to develop such an ideal source?

Mr. President, the second reason the dam completion is important involves the role of the Endangered Species Committee in its decision not to exempt the dam from the Endangered Species Act.

The committee was created to rule on the relative merits of construction projects and endangered species in cases where there is an "irresolvable conflict" between the two. In the case of the Tellico Dam, the endangered species was the snail darter. In reviewing the conflict between the two, the committee apparently did not consider the fact that the snail darter is thriving—according to TVA and the U.S. Fish and Wildlife Service—in at least two other habitats in the State of Tennessee. That should have exempted the Tellico from the act because there is no longer any irresolvable conflict between the project and an endangered species. The committee, however, went on to decide that the dam project, 95 percent complete, should not be completed for economic reasons—even though the "river alternative" will cost more to complete than the dam project and will provide fewer overall benefits and no energy benefit.

Mr. President the committee was not established to rule on economic benefits of public works. When the environmental question was answered, the committee function should have ended.

We cannot allow committee power to expand to the point that it is used to challenge all Federal projects. We should, therefore, remove the Tellico Dam project from Endangered Species Committee jurisdiction in order to establish certain limits on the committee's power, limits intended at the time of its authorization.

Mr. President, I urge that we authorize the completion of this very important project.

Mr. Baker. Mr. President, if I have any time remaining, I reserve the remainder of it.

The Presiding Officer. The Senator from Iowa has 15 minutes.

Mr. Culver. Mr. President, I rise in opposition to the amendment. At the same time, I wish to express my respect for the distinguished Senator from Tennessee (Mr. Baker) for his very dedicated work on our Committee on Environment and Public Works, and also with regard to this issue. I share his expression that he in no way should feel obliged to apologize for what is a very outstanding record in environmental matters.

Nevertheless, Mr. President, I find myself in opposition to this amendment, because I do believe that its enactment would constitute a repudiation of the considered judgment of the Congress when we reauthorized this legislation last year.

The Culver-Baker amendment established a committee to consider those conflicts which were deemed to be irreconciliable after good faith efforts at consultation.

It was necessary to introduce this mechanism to give the act some flexibility.

Mr. President, we also provide in the final stages of the congressional session last October an agreement under which consideration of two projects, the Tellico Dam in Tennessee and the Grayrocks Dam project in Wyoming would be given expedited consideration by this newly established Endangered Species Committee.

Mr. President, this process was set up and constituted, and the reviews took place. In the one instance, with regard to Tellico, it was the unanimous finding by the Endangered Species Committee, 7 to 0, that the project must be stopped. In the Grayrocks decision the committee voted unanimously that the project could continue.

In the case of Grayrocks, it was found that mitigating measures could be taken which would protect the habitat of the endangered whooping crane. The project could go forward once those arrangements were complied with and agreements reached to carry them out.

In the case of Tellico Dam, the vote was unanimous to stop that project and to make other arrangements.

Mr. President, by approving the amendment offered by the distinguished Senator from Tennessee, we would be turning our backs on an equitable solution adopted just last year that is working, as the Senator from Rhode Island (Mr. Chafee), has stated. If we do this, we would immediately find ourselves in the situation where Congress will be petitioned by a proliferation of project applications and problems and be asked to resolve these conflicts through specific legislative action or fiat.

In view of the fact that these conflicts involve enormously complicated issues of fact and science, we set up the committee to provide a general and rational approach to their resolution.

The proper channel for redress on the issues raised by the distinguished Senator from Tennessee are the courts. It is my understanding, in fact, that there is a legal case already presented in a petition filed with the sixth circuit to review the Tellico decision and the issues raised by the Senator from Tennessee.

Mr. President, I have considerably more information on this issue which addresses the allegations about calculating the project cost-benefit ratios.

I think it is important to know that the Endangered Species Committee did take into account Tellico's advanced stage of completion. In fact, in calculating the project's cost-benefit ratio, it used only remaining costs, about 5 percent of total project costs, against the full range of benefits.

I think, Mr. President, that it is interesting to note here the statement by Mr. Charles Schultze, who, as chairman of the Council of Economic Advisers, was a member of the committee. He remarked:

> The interesting phenomenon is that here is a project that is 95 percent complete and if one takes just the cost of finishing it against the benefits and does it properly, it doesn't pay, which says something about the original design.

Mr. President, I ask unanimous consent that the remainder of my statement be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

> The staff report to the Endangered Species Committee, dated January, 1979, set annualized benefits of the Tellico Dam at 6.52, as compared to annualized costs of 7.22, for a cost/benefit ratio of —.72. The annual benefits assigned to the river development alternative were 5.10, as compared with annual costs of 6.29, for a cost/benefit ratio of —1.2. These estimates were concurred in by the staffs of each agency represented on the Endangered Species Committee, including the Corps of Engineers, the Council of Economic Advisors, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Department of Agriculture, and the Department of the Interior.
>
> In its decision concerning the exemption, the Endangered Species Committee said, "Although both the TVA and staff calculations show somewhat greater net economic benefits for the Tellico project, its total benefits do not clearly outweigh those of the River Development alternative, particularly when unmeasured benefits are also considered." Unmeasured benefits include preservation of archeological, cultural and historic sites: preservation of customary fish and wildlife values; and ecological, aesthetic and scenic values associated with preservation of the snail darter.

Mr. CULVER. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, in many ways, this amendment is a tribute to the popularity, the influence, the esteem and affection in which the senior Senator from Tennessee is held because, really, it is not a very good amendment. But we are giving it a lot of consideration because of the distinction of the proposer of it.

He argues so eloquently for it that it causes us to ponder a minute just what he has in mind here. But after we look it over, it is a poor amendment, Mr. President, even though great eloquence has been mustered behind it, not only by the senior Senator, but by the junior Senator from Tennessee, as well.

Just taking the amendment on its merits it was mentioned by Senator SASSER that $116 million has been put into this dam and it seems such a shame to cancel that $116 million of concrete.

The money is not all in concrete, Mr. President, there are 38,000 acres of land there that they have taken for the project and that will still be there. Actually, only $22 million has been spent on the dam construction. This is not to slough off and say only $22 million, but the way we round off in billions of dollars in the Senate, I suppose $22.5

million is not that significant an amount, not when we think of what damage will be done if we go ahead with this project.

As was pointed out, some of the damage that will be done is the loss of the last major free-flowing stretch of river in eastern Tennessee; the loss of a renowned trout fishery; the loss of over 200—think of it, Mr. President—200 historic and prehistoric sites, including the sacred capital of the Cherokee Nation; and the flooding of this prime agricultural land.

Mr. President, they took 38,000 acres for the dam and reservoir. Sixteen thousand of it is going to be flooded. That is really a shame in this day and age when we are trying to preserve the land that we have.

I would like to refer once again to the statement Senator CULVER made about the finding of the Endangered Species Committee. All seven members voted not to exempt it, even the Representative from Tennessee. He did not even vote to exempt it. All seven were unanimous not to exempt it.

One of the members, Charles Schultze, Chairman of the Council of Economic Advisers, said:

> The interesting phenomenon here is that here is a project that is 95 percent complete. And if one takes just the cost of finishing it against the benefits and does it properly it doesn't pay.

In other words, the cost-ratio, just with the 5 percent left of the dam's construction does not even justify finishing this dam.

As Mr. Schultze concluded, this says a good deal about the original design of the whole project.

So, Mr. President, despite the affection and esteem and admiration we all have for the sponsor of the amendment, despite the fact of his eloquence, it seems to me the amendment should be defeated, not only on its merits, but also because it sets a very bad precedent.

Any time anybody loses before the Endangered Species Committee on a project, are they going to then come before the Congress and ask us to reverse it?

I do not think that is the way we want to do these things. This is a good Endangered Species Committee. The Senate and House both voted for it. It has passed. It has rather broad representation. It has a representative from the State or States most directly affected. It has a representative from the Department of the Interior, Department of Agriculture, Department of Army, Department of Commerce, EPA, and the Council of Economic Advisers. No one can say they are all tilted toward the environment. I do not think the credentials of the Chairman of the Council of Economic Advisers has much to do with the environment, but he is there to look at one of the key points, which is this: Do the benefits of the project clearly outweigh the benefits of alternative courses of action?

So, Mr. President, for those reasons, I strongly urge that the amendment not be accepted.

Mr. SCHMITT. Mr. President, this matter has not been determined finally, or we would not be here today.

I never was particularly happy with the committee arrangement to make a decision Congress should have been able to make a year ago. Nevertheless, today we are faced with the issue again, and I must say that it is a small piece of a larger issue, the issue of survival, survival of this country, in the face of impending threats from abroad to our energy supplies and impending threats to our economic development.

No one dam, Tellico or otherwise, is necessarily going to be the straw that breaks our back; but the accumulation of nondecisions that this country is now making with respect to energy development, with respect to the development of our natural resources, are the kinds of decisions that will break our back.

Unfortunately, that may happen, unless we are willing to act with dispatch and decision on matters such as this.

The danger we face is the danger of the hand-wringers, the danger of the nay-sayers, the people who do not believe this country can protect its environment simultaneously with moving into the future aggressively and with the knowledge, with the very clear knowledge, that if we do not survive, the ideals this country represents will not survive.

That is a fairly broad basis upon which to argue for one dam and, in a sense, to argue against a certain endangered species. But I feel very strongly that this country must realize that the challenge is not to preserve any one environmental situation, but the challenge is to find a way to maximize environmental protection for preservation at the same time that we are maximizing our ability to survive in this world. It is going to be represented by individual decisions such as this, and I hope the Senate will support the distinguished Senators from Tennessee, a State for which I have great affection and in which I have very deep roots.

The PRESIDING OFFICER. Who yields time?

Mr. CULVER. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Iowa has 9 minutes on the amendment.

Mr. CULVER. Is there any time remaining on the other side?

The PRESIDING OFFICER. One minute on the other side.

Mr. CULVER. Are they prepared to yield back the time on the other side?

Mr. President, on my time, I point out to the Members of the Senate that this amendment was defeated in the Committee on Environment and Public Works by a vote of 10 to 3 against the amendment.

I yield to the distinguished Senator from Rhode Island.

Mr. CHAFER. Mr. President, there is no question that the distinguished sponsor of this amendment has one of the finest records in the Senate for concern and support for the environment. I refer particularly to his efforts in connection with the Clean Water Act as well as the whole history of environmental protection matters. He pointed out in his statement—and I should like to corroborate that statement and support it—that few people in the Senate have a finer environmental record than the distinguished senior Senator from Tennessee.

The PRESIDING OFFICER. Who yields time? The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CULVER. Mr. President, I yield back the remainder of my time on the amendment.

Mr. SCHMITT. Mr. President, on behalf of the distinguished Senator from Tennessee, I yield back the 1 minute remaining on the amendment.

The Presiding Officer. The question is on agreeing to the amendment of the Senator from Tennessee. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. Cranston. I announce that the Senator from Hawaii (Mr. Inouye), the Senator from South Dakota (Mr. McGovern), and the Senator from Montana (Mr. Baucus) are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon) is absent on official business.

Mr. Stevens. I announce that the Senator from Wyoming (Mr. Simpson) is necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming (Mr. Simpson) would vote "yea."

The Presiding Officer (Mr. Stewart). Are there any Senators in the Chamber wishing to vote?

The result was announced—yeas 43, nays 52, as follows:

[Rollcall Vote No.128 Leg.]

Yeas—43

Armstrong
Baker
Bellmon
Boren
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Cochran
Ford
Garn
Glenn
Goldwater
Hatch
Hayakawa
Heflin
Helms
Hollings
Huddleston
Humphrey
Jackson
Javits
Jepsen
Johnston
Kassebaum
Laxalt
Long
Lugar
McClure
Morgan
Nunn
Pryor
Sasser
Schmitt
Schweiker
Stennis
Stevens
Stewart
Talmadge
Thurmond
Tower
Warner
Young

Nays—52

Bayh
Bentsen
Biden
Boschwitz
Bradley
Chafee
Chiles
Church
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durenberger
Durkin
Eagleton
Exon
Gravel
Hart
Hatfield
Heinz
Kennedy
Leahy
Levin
Magnuson
Mathias
Matsunaga
Melcher
Metzenbaum
Moynihan
Muskie
Nelson
Packwood
Pell
Percy
Pressler
Proxmire
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Stafford
Stevenson
Stone
Tsongas
Wallop
Weicker
Williams
Zorinsky

Not Voting—5

Baucus
Cannon
Inouye
McGovern
Simpson

So Mr. Baker's amendment (No. 249) was rejected.

Mr. **Culver.** Mr. President, the distinguished chairman of the full committee, the senior Senator from West Virginia, would like to speak on the bill.

The **Presiding Officer.** The Senator from West Virginia is recognized.

Mr. **Randolph.** Mr. President, a little more than 2 years ago the reorganization resolution which restructured the committees in the Senate assigned several new subjects to the Committee on Environment and Public Works. One was fish and wildlife, another was nuclear regulation, and a third was endangered species.

Mr. President, the reauthorization of the Endangered Species Act has had very careful and continued study by the members of the Committee on Environment and Public Works.

There are 14 members of our committee. We have not had any surfacing of a political consideration of whatever the matter before our committee, from the standpoint of the Democratic or Republican parties within the committee. I express a very special appreciation to Senator Baker who is intensely interested in this bill, and who has presented an amendment in the committee and now again in the Senate.

But the tribute to Senate Baker, the minority leader of the Senate, expressed by Senator Chafee is one that is not just a pleasantry. It is one which, upon the facts of the Senator from Tennessee's record, is factual in every sense of the word.

Even though I could not support the amendment in committee or in the Senate, I join in my esteem, personal and official, for the integrity and the understanding of the able Senator from Tennessee, the floor leader of those who sit on the other side of the aisle.

Now, on the specific legislation which is before us, the Senator from Iowa (Mr. Culver) is effective and knowledgeable. He is always forceful in his presentation and in complex command of the subject matter. I consider him cooperative in the committee's work generally, but I have admired the tenacity with which he has pursued the issues in which he believes.

One of his leadership traits is to follow through, and he has done that in the presentation of this bill and in the hearings that were conducted by him and other members of the subcommittee. Senator Culver has guided the development of this legislation that, I think, provides a balanced and a workable approach in this important field.

Senator Chafee is the minority floor manager on this bill, and we know him within the committee and the subcommittee on which he serves as a member who is very careful and does his homework long before he comes into the Chamber or into the committee or subcommittee when we are considering matters of importance.

This is true of the membership of the committee as a whole, all 14 members. I do not stand here in the Senate today just to speak well of my colleagues with whom I am privileged to work on that committee, but I do say that it is a committee with a massive amount of legislative concern. Legislation is before us dealing with a wide range of subject matter, and it is a committee in which the members work very diligently. The results, I think, when measures are brought to the Chamber, cause respect, although not always, and understandably so, unanimous support of the Members of the Senate.

Mr. President, turning to the bill itself, we are considering the reauthorization of the Endangered Species Act, S. 1143. In the last 2 years this act has been given serious and careful consideration by the members of the Senate Committee on Environment and Public Works, and by the Senate as a whole. It has been the subject of long hearings, extensive debate, and considerable amendment. As a result, the act's shortcomings have been eliminated at the same time the act has been left strong and viable for the protection of endangered species.

The Endangered Species Act recognizes that it is in man's own interest to protect endangered species and their genetic materials intact for generations to come. However, the act is also flexible enough to permit balancing the benefits of protecting species against other legitimate national goals such as energy, agricultural, and water development.

Flexibility was one of the positive additions to the Endangered Species Act provided by the last Congress. A seven-member Endangered Species Committee, composed of the Secretaries of Interior, Agriculture, and the Army, the Chairman of the Council of Economic Advisers, the Administrators of the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration and the affected State or States, was created to provide a national mechanism for resolving endangered species conflicts. The committee can exempt a project from compliance with the Endangered Species Act if certain criteria have been met. These criteria require the committee to balance the benefits of alternatives to the project which would also protect the species.

The Endangered Species Committee is working as it was intended. It has met to consider exemptions for two projects and has voted unanimously to exempt one, the Grayrocks Dam project in Wyoming, from the provisions of the Endangered Species Act. It also voted unanimously not to exempt the Tellico Dam from the act, stating that the benefits of completing the project do not clearly outweigh the benefits of alternatives which are also consistent with preserving the endangered snail darter.

By avoiding a case-by-case congressional exemption procedure the Endangered Species Committee is providing a balanced approach to resolving endangered species conflicts.

The Endangered Species Act is landmark wildlife legislation. It protects plants and animal species for the enjoyment and benefit of our children and grandchildren in future generations. The bill before the Senate extends this program essentially as it was modified last year. This extension, for a total of 4 years, will provide us with extensive experience upon which any future modifications would be based.

AMENDMENT NO. 250

(Purpose: To require endangered and threatened species to have an economic or aesthetic value)

Mr. Bellmon. Mr. President, I call up an amendment which I have at the desk, and I ask for its immediate consideration.

The Presiding Officer. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. Bellmon) proposes an unprinted amendment numbered 250.

Mr. BELLMON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. 8. (a) Section 3(6) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1532(6)), is amended by inserting immediately after "means any species which" the following: "the Secretary has determined has an economic or aesthetic value to man and which".

Mr. BELLMON. Mr. President, this is a rather simple amendment, and I would hope that the manager of the bill and the assistant manager could see the merit of the amendment and accept it, though I am not too optimistic at the moment.

I think we are all well aware of the benefit of seeking to preserve the Bengal tiger, the sperm whale, and the whooping crane is a commendable goal of many worried about the extinction of various species on this planet. The preservation of all species may appear to be a virtuous act on its face, but preservation is not always in the best interest of nature or of mankind.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BELLMON. In retrospect, it is the supreme arrogance for man to conclude that the process of creation can be stopped in its tracks. Over the millennia, the Earth has lost many species because of natural selection due to a species' lack of adaptability in a changing environment. The various types of dinosaurs are the best known of these extinct lifeforms. Today, we cannot consider the loss of the dinosaur an extreme tragedy. The decline of these animals cleared the way for the Age of Mammals and eventually to the development of the homo sapiens species. This process continues and man, for all his egotism, cannot halt the orderly development of the universe or even our own planet.

Mr. President, scientists have identfiied and classified almost 1 million animal species and are discovering new ones each year. In addition, there are known to be more than 350,000 plant species and this number also grows day by day. Of these, 24 plant species are either endangered or threatened while 215 animal species are either endangered or threatened. Plainly, if the process continues to run its present course, the list will grow to paralyzing levels.

The popular trend today is to criticize man's technical progress and blame changes in the environment on man's callousness or thoughtlessness. I support endeavors to clean up our Nation's waterways and the air we breathe. In Oklahoma, we have seen progress that has improved living conditions both for man and for the creatures of the wild. Flood control and water supply dams have created thousands of lakes which have greatly enriched our once harsh environment. Not only man but migratory waterfowl, deer, wild turkey, bob-white quail, many kinds of fish and thousands of other species have benefited through these efforts to improve their environment.

Currently our laws direct protection for all endangered species except insect pests without serious consideration of its present or future value. The fact is that these are species we can do without. I seriously doubt that the world needs rats or cockleburs.

Mr. President, the amendment I am offering today would curb our overexuberance. It would suspend the act unless an economic or esthetic value can be shown to accrue from the species under consideration.

At the present time there is no provision for the use of any judgment as to whether or not a species has present or potential value. If it can be shown that the species is endangered, unless it is an insect pest, then those administering the act have no option except to call into play the full force and effect of the act and to conduct the operation of the act accordingly.

So, Mr. President, I feel that this is an essential complement to the act. It will not in any way lessen the ability of the administrators of the act to look after the species which most of us are concerned about, and yet it will make it possible for some of us to use some judgment and to apply the act in the most flexible manner.

Mr. CULVER. Mr. President, I rise in opposition to this amendment by the distinguished Senator from Oklahoma.

Senator Bellmon is introducing an amendment to require, in effect, that economic assessments be made by the Secretary before an endangered species can be listed, and to delegate the power to the Secretary of the Interior to make a subjective judgment as to what particular threatened species or endangered species may or may not possess esthetic value.

We all know that beauty is in the eyes of the beholder; and certainly it conveys an incredibly broad discretionary authority, in this instance, to that one official to make these decisions.

Mr. President, the important fundamental thing to acknowledge about the whole issue of endangered species and the reason for protecting them is that we believe there is a mystery to the design of the universe and to the role in the ecosystem or the biosphere of these various species and their value.

The important thing is that we do not know the value of these species. We do not know the value in terms of their potential scientific importance, their importance to medical research, to fighting diseases, to finding the solution to many of man's problems. How do you do an economic analysis on the esthetic, the cultural, or the scientific benefits of a species? How do you place a price tag on the medical contributions of the foxglove plant, for example, which is now so important in treating heart disease?

What if we had a Secretary of the Interior who said, "This thing is called a foxglove plant. Big deal. It looks like a weed to me." What if we went ahead and let it be destroyed? What about the victims of heart disease in this country who would not have the benefits of scientific and medical advances which have been made possible because we had the wisdom and foresight to protect this plant's continued existence? Who is going to put a price tag on the value of that plant? Someone might say, "It looks like a stinking weed. Let's bulldoze it over."

That would be thought of as progress.

What about fruit flies? They are a pest. Fruit flies are one of the most important keys today in understanding genetic engineering. We might have a Secretary of the Interior, a political appointee, go out and say, "Fruit flies are pests. Get rid of them all."

If we get rid of them, we will pay a price. How can we do an economic analysis when that Secretary or, indeed any Member of the Senate, has no appreciation or no understanding at all of the potential scientific or medical value of that species?

Mr. President, what about the armadillo, which is used in leprosy research?

We just heard that it did not matter if one animal or another is not around. We get carried away with the bear or the eagle. In terms of the quality of life of the people on this planet, it may be the most insignificant and the most obnoxious species or life form that holds within it the secrets of medical breakthroughs that can extend life or that can improve the quality of life of our people.

What about sponges? Are sponges in the way? Are they unnecessary? Certain sponges are critically important today for viral research. What if we get a Secretary of the Interior who says, "Give me an economic cost-benefit analysis on whether I ought to list these sponges as endangered species? What is the esthetic value of this sponge? I cannot even find it under the water. I do not think it has any esthetic value," says the Secretary of the Interior who alone will make that objective determination. "And moreover, I do not think it has any real economic value so we ought to get rid of it." Or, he might say, "It has economic value because we have a sponge industry so we will keep it."

Mr. President, the value of plants and of animals is among the mysteries of the universe. Their value to mankind is absolutely incalculable.

Further, and this is important, under last year's amendment offered by the distinguished Senator from Idaho (Mr. McClure), we adopted section 4(b)(4) of this act. That does provide that economic impacts must be considered. When? When we designate critical habitat. That is the key thing. That is when we can start making a judgment as to how much to set aside or not. But if we just do it on the basis of an ad hoc guestimate on an individual species, plant or animal, there is no way we can do it.

Under the act today, economic impacts must be considered when critical habitat is designated. Since critical habitat must be designated "to the maximum extent prudent," when species are listed, the Bellmon amendment is clearly unnecessary.

In summary, it seems to me, Mr. President, that the Senator's concerns are really already covered by the Act. With all due respect for the Senator, and I know the Senator from Oklahoma too well to believe that he could not conceivably appreciate fully the implications of this amendment—and there are few Members of the Senate whom I hold in higher regard than the distinguished Senator from Oklahoma—quite honestly the potential consequences and implications of this amendment, if adopted, are indeed incalculable.

We preserve and set aside habitats for these endangered species because we do not know their value, and it is impossible to set an economic price tag on a species and decide what lives and what dies.

As long as we can provide for their continued existence, then science has the opportunity to plumb further the mysteries of this universe.

We have also set up a mechanism for the reconciliation in those few instances—and they are very few—where we have not, through consultation, been able to work out to mutual satisfaction the continued existence of the species and the project. We have had a lot of talk about Tellico. We had some talk last year about the Grayrocks Dam. The fact of the matter is we have had some 4,500 cases, all of which have been resolved through consultation. The projects have been developed, accommodations and alternatives have been considered, and we preserved the species.

The only two conflicts that were not satisfied through consultation were Tellico and Grayrocks. We set up the Endangered Species Committee to take into account economics and a number of other factors. The committee unanimously said Tellico could not go completed. In the case of Grayrocks, the committee said unanimously it could be completed.

Last year's amendments introduced flexibility to the act. We are taking economic impact into account as a result of the amendment we adopted last year. It is being considered in the designation of critical habitat and not by attempting the imposible task of putting an economic or esthetic value on an individual endangered species. I yield to the Senator from Rhode Island.

Mr. BELLMON. Will the Senator yield?

Mr. CHAFEE. I yield.

Mr. BELLMON. I would like to respond briefly to the argument made by the distinguished Senator from Iowa.

The Senator from Iowa is concerned that the Secretary of the Interior should not be authorized by law to make a subjective judgment as to whether or not a plant or an animal species has economic or esthetic value. I would like to call the attention of the Senator to the definition of endangered species as it is in the law now. The law says that any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the class Insecta, determined by the Secretary to constitute a pest.

We already have the Secretary making subjective judgments as far as insects are concerned. The scientific value of research on insects is equally as great, or at least has the same potential, as the research on the plants that the Senator has referred to.

All I am doing in this amendment is extending the right of the Secretary to make the same subjective judgment he is required under law to make on insects, to extend that to plant and animal species. There is nothing different about this except that we are going the second and third step beyond where the act already goes.

I agree with the Senator that there are many plants known to have scientific value, and certainly they should be protected. I doubt that there is any danger that the Secretary would make a judgment on a plant or an animal until the scientific analysis and evaluations were carefully made.

To me, we have a law on the books now that says, for instance, if we found a way to exterminate the rats, we could not do that.

Mr. CHAFEE. Mr. President, in answer to the final point made by the very distinguished Senator from Oklahoma, I point out, as to that class of insert which is covered in this very section of the act which he referred to, that this act does give the Secretary permission to determine that a certain class of insect constitutes a class whose protection under the provisions of this act would present an overwhelming and overriding risk to man. As I understand it, that very provision was put in there so that, in case the boll weevil were in danger of being exterminated, somebody could not come forward and say, "Well, the boll weevil is an endangered species and we have to protect it."

As we know, there are limitations there. The Secretary cannot just go out and decide some insect should be eliminated; it is an insect whose protection would provide an overwhelming and overriding risk to man.

Those same provisions do not cover the point it seems to me the Senator is making in his amendment. Let me point out something specific, if I might.

Under this very act we are considering here today, we are providing funds for the captive breeding of the California condor, of which there are only 40 left in the country. In line with that, let us consider this definition, as proposed by the Senator from Oklahoma, as to what constitutes an endangered species. To be an endangered species, under this amendment, the Secretary would have to determine that the species has an economic or an esthetic value to man. No one would suggest, I think, that the California condor has an economic value to man. It does not. So we cannot list it under that category.

We go then to the question, does it have an esthetic value to man? I just talked to one of our very distinguished colleagues about the condor, not in connection with this amendment, but in general. I said, "Have you ever seen one?" He said, "Yes, I have and it is the ugliest bird you have ever seen. It looks like some kind of buzzard."

Therefore, does the condor qualify as having esthetic value to man? I know this is taking rather an extreme example, but there are many who argue that the condor has neither economic—and I think that is easy, we cannot argue with that—nor does it have an esthetic value to man.

I just think that this amendment proposed by the Senator goes, really, to the very heart of this whole act. I think it goes much farther, I suspect, than the Senator proposed originally, or was thinking about. It seems to me it presents great, great difficulties to the whole Endangered Species Act and the whole theory of preserving some of these very minor, if you want to call them that, animals that do not really affect man very much. I think that if, perhaps in the future, he were worried about the rat, for example, perhaps some kind of special provision could be put in there like the insect provision. But this goes way beyond that.

Mr. President, I strongly urge that the amendment not be accepted.

Mr. CULVER. Mr. President, this amendment would really gut the Endangered Species Act. It does not merely extend the judgment being made for insects. The insects are the only exception given among all species. It is one of the considerations entered into at the time the act was originally passed in 1973, specifically aimed at boll weevils and other insects.

If there were no exceptions for insects, then the Secretary would have no way to stop sudden plagues of insects such as locusts, which may not be plentiful one year, but, due to a sudden surge of breeding, may overrun croplands the next year. That was the one narrow exception.

The distinguished Senator from Rhode Island has offered additional arguments as to why this particular standard and criterion would be so unworkable and would have such dangerous implications and consequences for the viability of this legislation and its value to mankind.

Mr. Bellmon. Mr. President, I yield back the remainder of my time.

Mr. Culver. Mr. President, I yield back the remainder of my time.

Mr. Bellmon. Mr. President, I yield back the remainder of my time.

The Presiding Officer. All time is yielded back. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. Cranston. I announce that the Senator from Hawaii (Mr. Inouye), the Senator from North Carolina (Mr. Morgan), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon) is absent on official business.

I further announce that, if present and voting, the Senator from North Carolina (Mr. Morgan) would vote "nay."

Mr. Stevens. I announce that the Senator from Arizona (Mr. Goldwater) and the Senator from Wyoming (Mr. Simpson) are necessarily absent.

The Presiding Officer. Are there Senators who have not voted who wish to vote on this rollcall?

The result was announced—yeas 14, nays 80, as follows:

[Rollcall Vote No. 129 Leg.]

YEAS—14

Baker
Bellmon
Boren
Garn
Hatch
Heflin
Helms
Johnston
Laxalt
McClure
Stevens
Talmadge
Tower
Young

NAYS—80

Armstrong
Baucus
Bayh
Bentsen
Biden
Boschwitz
Bradley
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Chafee
Chiles
Church
Cochran
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durenberger
Durkin
Eagleton
Exon
Ford
Glenn
Gravel
Hart
Hatfield
Hayakawa
Heinz
Hollings
Huddleston
Humphrey
Jackson
Javits
Jepsen
Kassebaum
Kennedy
Leahy
Levin
Long
Lugar
Magnuson
Mathias
Matsunaga
McGovern
Melcher
Metzenbaum
Moynihan
Muskie
Nelson
Nunn
Packwood
Pell
Percy
Pressler
Proxmire
Pryor
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Stafford
Stevenson
Stewart
Stone
Thurmond
Tsongas
Wallop
Warner
Weicker
Williams
Zorinsky

NOT VOTING—6

Cannon	Inouye	Simpson
Goldwater	Morgan	Stennis

So Mr. Bellmon's amendment (No. 250) was rejected.

Mr. DOLE. Mr. President, the Senator from Kansas supports this measure which will continue to protect and conserve the habitats and lives of the many endangered and threatened species of fish, wildlife, and plants in the United States.

Since its passage in 1973, the Endangered Species Act has provided the Nation with a comprehensive program for conservation of the endangered or threatened species of fish and wildlife living in the United States. It is estimated that there are between 3 and 10 million species of plants and animals in the world and today about 1,000 birds and mammals face a serious threat of extinction. Adding to this threat, over 200 species of wildlife in the United States alone are now listed as endangered. Among this list lies the symbol of America—the American bald eagle.

ENDANGERED SPECIES IN KANSAS

The loss to the environment of any species of animal cannot easily be calculated. The disappearance of a species can upset the entire ecosystem of the area, causing deterioration of the water quality and land compositions. Included in this Nation's endangered list is the American crocodile, the whooping crane, the ivory billed woodpecker, the California condor, and the black-footed ferret, which has established habitat in western Kansas.

The Senator from Kansas believes that the continuation of this measure will serve as the vanguard in prevention against other species entering onto the endangered or threatened lists of the future. In the State of Kansas lies one of the largest habitats for the prairie chicken. Because of these vast plains, located near the Flint Hills, Kansas is now one of the few States in the United States to allow the hunting of this animal. In addition, the cave areas near Galena, Kans., provide the habitat for an endangered salamander population and the Neosho River of Kansas provides the breeding grounds and habitat for the mineral catfish species known as the Mad Tom fish.

Another endangered fish species in Kansas, named after the city in which he exists, is the Topeka shiner. Of particular significance today is the future of the black-footed ferret, who is known to have a large habitat in western Kansas. This animal has been called the American weasel and to date, the residents of western Kansas have been unable to sight the mammal for several years. What is feared in Kansas, and nationwide, is the complete disappearance of this creature and the loss to the environment and mankind that will result.

NEED FOR ENVIRONMENTAL BALANCE

Mr. President, this Nation needs an environmental balance as much as an economic balance. The Endangered Species Act will provide the mechanisms to work for this balance and prevent the addition of species to the lists of endangered and hopefully halt the rate at which extinction has grown.

Mr. MCCLURE. Mr. President, I ask for the yeas and nays on final passage.

The Presiding Officer. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. Culver. Third reading, Mr. President.

The Presiding Officer. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The Presiding Officer. Do the Senators managing the bill yield back their time?

Mr. Culver. I yield back the remainder of my time.

Mr. Chafee. I yield back the remainder of my time.

The Presiding Officer. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. Cranston. I announce that the Senator from Hawaii (Mr. Inouye) and the Senator from North Carolina (Mr. Morgan), are necessarily absent.

I further announce that the Senator from Nevada (Mr. Cannon), is absent on official business.

I further announce that, if present and voting, the Senator from North Carolina (Mr. Morgan) and the Senator from Nevada (Mr. Cannon) would each vote "yea."

Mr. Stevens. I announce that the Senator from Wyoming (Mr. Simpson) is necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming (Mr. Simpson) would vote "yea."

The Presiding Officer (Mr. Bradley). Are there any Senators in the Chamber desiring to vote who have not done so?

The result was announced—yeas 91, nays 5, as follows:

[Rollcall Votes No. 130 Leg.]

YEAS—91

Armstrong
Baker
Baucus
Bayh
Bellmon
Bentsen
Biden
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd, Harry F., Jr.
Byrd, Robert C.
Chafee
Chiles
Church
Cochran
Cohen
Cranston
Culver
Danforth
DeConcini
Dole
Domenici
Durenberger
Durkin
Eagleton
Exon
Ford
Glenn
Goldwater
Gravel
Hart
Hatfield
Hayakawa
Heflin
Heinz
Helms
Hollings
Huddleston
Jackson
Javits
Jepsen
Johnston
Kassebaum
Kennedy
Leahy
Levin
Long
Lugar
Magnuson
Mathias
Matsunaga
McClure
McGovern
Melcher
Metzenbaum
Moynihan
Muskie
Nelson
Nunn
Packwood
Pell
Percy
Pressler

YEAS—Continued

Proxmire
Pryor
Randolph
Ribicoff
Riegle
Roth
Sarbanes
Sasser
Schmitt
Schweiker
Stafford
Stevens
Stevenson
Stewart
Stone
Talmadge
Thurmond
Tower
Tsongas
Wallop
Warner
Weicker
Williams
Young
Zorinsky

NAYS—5

Garn
Hatch
Humphrey
Laxalt
Stennis

NOT VOTING—4

Cannon
Inouye
Morgan
Simpson

So the bill (S. 1143), as amended, was passed, as follows:

S. 1143

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7(q) of the Endangered Species Act of 1973 is amended by striking, "not to exceed $600,000 for fiscal year 1979, and not to exceed $300,000 for the period beginning October 1, 1979, and ending March 31, 1980." and inserting in lieu thereof, "not to exceed $600,000 for each of the fiscal years 1979, 1980, 1981, and 1982.".

Sec. 2. Section 15 of such Act is amended to read as follows:

"Sec. 15. (a) Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for the fiscal years 1979 and 1980; not to exceed $25,000,0000 for fiscal year 1981; and not to exceed $27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

"(2) not to exceed $2,500,000 for the fiscal years 1979 and 1980; not to exceed $3,000,000 for fiscal year 1981; and not to exceed $3,500,000 for fiscal year 1982 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

(b) There are authorized to be appropriated, beginning October 1, 1979, not to exceed $500,000 for the Department of the Interior to implement the recovery program for the California condor, which sum shall be available until expended.".

Sec. 3. (a) Section 3(11) is amended by striking "would (A) jeopardize" and inserting in lieu thereof "is likely to (A) jeopardize".

(b) Section 7(g)(1) is amended by striking "may jeopardize" and inserting in lieu thereof "is likely to jeopardize".

Sec. 4. (a) Section 4(f)(2)(C)(ii) is amended by striking "120-day period" each time it appears and inserting in lieu thereof "one-year period".

(b) Such section is further amended by adding at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines on the basis of the best scientific and commercial data that substantial evidence does not exist to warrant such regulation, he shall withdraw it.".

Sec. 5. (a) Section 7(c) is amended by adding at the end thereof the following new sentence: "If an exemption applicant desires to seek a permanent exemption pursuant to subsection (h)(2) of this section, he may conduct a biological assessment pursuant to this subsection.".

(b) The first sentence of section 7(h)(2)(B) is amended to read as follows:

"(B) An exemption shall not be permanent under subparagraph (A) if the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation or identified in a biological assessment prior to or in conjunction with the Committee's consideration of such exemption".

Sec. 6. (a) Section 7(a), 7(b), 7(c), and 7(d) are amended by striking "any endangered or threatened species" wherever it occurs and inserting in lieu thereof "any listed or proposed endangered or threatened species".

(b) Section 4(f) is amended by adding a new paragraph (6) to read as follows:

"(6) Notwithstanding the requirements of subsection 4(b)(4) and of paragraphs (1) through (5) of this subsection, if the Secretary determines pursuant to section 7 that an agency action is likely to jeopardize the existence of an endangered species or threatened species proposed pursuant to this section, or adversely modify the proposed critical habitat of such species, the Secretary shall within 90 days of such determination either publish in the Federal Register a final regulation adding such species or critical habitat to the list published pursuant to subsection (c) of this section, or withdraw the regulation proposing such listing."

Sec. 7. Section 7(g)(2)(A) is amended by striking "not later than 90 days after the completion of the consultation process." and inserting in lieu thereof, "not later than 90 days after the completion of the consultation process, or, in the case of a permit or license applicant, not later than 90 days after final agency action has been taken on the permit or license application.".

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 96-697

ENDANGERED SPECIES ACT AMENDMENTS

DECEMBER 11, 1979.—Ordered to be printed

Mr. MURPHY of New York, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1143]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That section 2(a)(5) of the Endangered Species Act of 1973 (16 U.S.C. 1531(a)(5)) is amended by striking out "fish and wildlife." and inserting in lieu thereof "fish, wildlife, and plants.".

SEC. 2. Section 3(11) of the Endangered Species Act of 1973 (16 U.S.C. 1532(11)) is amended by striking out "(A)" and all that follows thereafter and inserting in lieu thereof "violate section 7(a)(2).".

SEC. 3. Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended—

(1) by amending subsection (b)(1) by striking out "him" and inserting in lieu thereof the following: "him after conducting a review of the status of the species";

(2) by amending subsection (f)(2)(B)(i) to read as follows:

"(i) not less than 60 days before the effective date of the regulation, shall publish—

"(I) a general notice and the complete text of the proposed regulation in the Federal Register, and

"(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text, and a map of the proposed critical habitat) in a newspaper of general circulation within or adjacent to such habitat;";

(3) by amending subsection (f)(2)(B)(iv)(II) by striking out "if requested," and inserting in lieu thereof "if requested within 15 days after the date on which the public meeting is conducted,";

(4) by amending that part of subsection (f)(2)(C) which precedes clause (i) by inserting ", subsection (b)(4) of this section," immediately after "Neither subparagraph (A) or (B) of this paragraph";

(5) by amending subsection (f)(2)(C)(ii)—

(A) by striking out "fish or wildlife," and inserting in lieu thereof "fish or wildlife or plants,",

(B) by striking out "fish and wildlife," and inserting in lieu thereof "fish, wildlife, and plants,",

(C) by striking out "120-day period" each place it appears therein and inserting in lieu thereof "240-day period", and

(D) by adding at the end thereof the following new sentence: "If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it."; and

(6) by adding at the end thereof the following new subsection:

"(h) AGENCY GUIDELINES.—The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

"(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c)(2) of this section;

"(2) criteria for making the findings required under such subsection with respect to petitions;

"(3) a ranking system to assist in the identification of species that should receive priority review for listing; and

"(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.".

SEC. 4. Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is amended—

(1) by amending subsection (a)—

(A) by striking out "(a) CONSULTATION.—" and inserting in lieu thereof "(a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—(1)";

(B) by striking out the third sentence thereof; and

(C) by adding at the end thereof the following:

"(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section re-

ferred to as an 'agency action') is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

"(3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).";

(2) by amending the last sentence of subsection (b) to read as follows: "The Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or the permit or license applicant in implementing the agency action.";

(3) by amending each of subsections (b), (c), (d), (e)(2), (f), (g)(1) and (5), (h)(1), and (m) by striking out "subsection (a)" wherever it appears therein and inserting in lieu thereof "subsection (a)(2)";

(4) by further amending subsection (c)—

(A) by inserting "(1)" immediately after "BIOLOGICAL ASSESSMENT.—", and

(B) by adding at the end thereof the following new paragraph:

"(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.";

(5) by striking out "avoid jeopardizing" and all that follows thereafter in subsection (d) and inserting in lieu thereof "not violate subsection (a)(2).";

(6) by further amending subsection (g)(1) by striking out "may jeopardize" and all that follows thereafter in the first sentence thereof and inserting in lieu thereof "would violate subsection (a)(2).";

(7) by amending subsection (g)(2)(A) by striking out "process." and inserting in lieu thereof "process; or, in the case of any agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of title 5, United States Code, with respect to the issuance of the permit or license.";

(8) by amending subsection (g)(3) by redesignating subparagraph (B) as subparagraph (C), and by inserting immediately after subparagraph (A) the following new subparagraph:

"(B) If biological opinions of both the Secretary of the Interior and the Secretary of Commerce indicate that an agency action would violate subsection (a)(2), such Secretaries shall jointly convene a review board to consider any application for exemption filed with respect to such agency action.";

(9) by further amending subsection (g)(5)—

(A) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively,

(B) by inserting "the Federal agency concerned and" immediately before "such exemption applicant" in clause (B) (as so redesignated),

(C) by redesignating subclauses (A), (B), and (C) as subclauses (i), (ii), and (iii), respectively,

(D) by striking out "will avoid jeopardizing" and all that follows thereafter in subclause (i) (as so redesignated) and inserting in lieu thereof "would not violate subsection (a)(2);", and

(E) by striking out "exemption applicant" and all that follows thereafter in the last sentence and inserting in lieu thereof "Federal agency concerned or the exemption applicant has not met its respective requirements under subclause (i), (ii), or (iii) shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.";

(10) by amending subsection (g)(6) by striking out "subparagraphs (A), (B), and (C)" and inserting in lieu thereof "subclauses (i), (ii), and (iii)";

(11) by amending subsection (h)(2) to read as follows:

"(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

"(i) regardless whether the species was identified in the biological assessment; and

"(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

"(B) An exemption shall be permanent under subparagraph (A) unless—

"(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

"(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding."; and

(12) by amending the first sentence of subsection (q) to read as follows: "There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982.".

SEC. 5. Section 8 of the Endangered Species Act of 1973 (16 U.S.C. 1537) is amended—

(1) by inserting "and plants" immediately after "fish or wildlife" in subsection (b)(1);

(2) by inserting "or plants" immediately after "fish or wildlife" each place it appears in subsection (b)(3);

(3) by inserting "or plants" immediately after "fish or wildlife" in subsection (c)(1); and

(4) by striking out subsection (e).

SEC. 6. (a) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is further amended—

(1) by adding immediately after section 8 the following new section:

"CONVENTION IMPLEMENTATION

"SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

"(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

"(c) SCIENTIFIC AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

"(d) INTERNATIONAL CONVENTION ADVISORY COMMISSION.—(1) There is hereby established the International Convention Advisory Commission (hereinafter in this section referred to as the 'Commission').

"(2) The Commission shall be composed of the following members:

"(A) One member appointed by each of the following Federal officers from his respective agency:

"(i) The Secretary.

"(ii) The Secretary of Agriculture.

"(iii) The Secretary of Commerce.

"(iv) The Director of the National Science Foundation.

"(v) The Chairman of the Council on Environmental Quality.

"(B) One member appointed by the Secretary from among officers and employees of the State agencies having fish and wildlife conservation and management responsibilities.

"(C) The Secretary of the Smithsonian Institution is invited to appoint a member.

"(3)(A) Individuals who are appointed as members of the Commission under paragraph (2) must be scientifically qualified.

"(B) The term of office of a member of the Commission appointed under paragraph (2)(B) is two years and an individual may be appointed under such paragraph for any number of terms; except that an individual may not be appointed under that paragraph for a term that would be a third consecutive term for that individual under that paragraph.

"(C) While away from his home or regular place of business in the performance of services for the Commission, a member appointed under paragraph (2)(B) or (C) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

"(D) Members of the Commission who are full-time officers or employees of the United States shall receive no additional compensation on account of their service on the Commission.

"(4)(A) The Commission shall elect a chairman from among its members. The term of office of the chairman is one year.

"(B) No recommendation referred to in paragraph (5) shall be deemed to be a recommendation of the Commission unless a majority of the members of the Commission vote for that recommendation.

"(5) The Commission shall make recommendations to the Secretary or his designee on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention. The Commission shall include with any such recommendation any written dissenting view made by any member.

"(6) In the discharge of its responsibilities, the Commission shall, to the extent practicable, ascertain the views of, and utilize the expertise of, the governmental and nongovernmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

"(7) In any case in which the Scientific Authority decides not to accept a recommendation made by the Commission under paragraph (5), the Scientific Authority shall provide to the Commission a written explanation of the reasons for that decision and shall publish the explanation in the Federal Register.

"(8)(A) The Chairman of the Commission, with the concurrence of the Commission, shall appoint an Executive Secretary for the Commission. The Executive Secretary shall carry out such duties and functions as shall be prescribed by the Commission, shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(B) The Secretary shall provide the necessary staff and administrative support for the Commission.

"(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere."; and

(2) by amending the table of contents by inserting immediately after the section title for section 8 the following:

"Sec. 8A. Convention implementation.".

(b) Until such time as the Chairman, Members, and Executive Secretary of the International Convention Advisory Commission are appointed, but not later than 90 days after the date of the enactment of this Act, the functions of the Commission shall be carried out by the Endangered Species Scientific Authority as established by

Executive Order Numbered 11911, with staff and administrative support being provided by the Secretary of the Interior as set forth in that Executive order.

SEC. 7. Section 10(f) of the Endangered Species Act of 1973 (16 U.S.C. 1539(f)) is amended—

(1) in paragraph (4), by inserting "unless such exemption is renewed under paragraph (8)" after "certificate" in subparagraph (C); and

(2) by adding at the end thereof the following new paragraphs:

"(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for a renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

"(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

"(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.".

SEC. 8. Section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. Except as authorized in sections 6 and 7 of this Act, there are authorized to be appropriated—

"(1) not to exceed $23,000,000 for each of fiscal years 1979 and 1980, not to exceed $25,000,000 for fiscal year 1981, and not to exceed $27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

"(2) not to exceed $2,500,000 for each of fiscal years 1979 and 1980, not to exceed $3,000,000 for fiscal year 1981, and not to exceed $3,500,000 for fiscal year 1982 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

"(3) not to exceed $1,500,000 for fiscal year 1980, not to exceed $1,750,000 for fiscal year 1981, and not to exceed $1,850,000 for fiscal year 1982 to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of terrestrial plants.".

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

JOHN M. MURPHY,
JOHN BREAUX,
JOHN D. DINGELL,
DAVID R. BOWEN,
PAUL N. MCCLOSKEY, Jr.
EDWIN B. FORSYTHE,
Managers on the Part of the House.
JOHN C. CULVER,
EDMUND S. MUSKIE,
GARY HART,
JOHN H. CHAFEE,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 of the conference report adds "plants" to section 2(a)(5) of the Act to the Congressional finding that to encourage endangered species conservation programs is a key to meeting the Nation's international commitments and to better safeguarding the Nation's heritage in fish, wildlife and plants.

SECTION 2

Section 2 of the conference report adopts the House amendment to Section 3(11) of the Act. This provision conforms the definition of "irresolvable conflict" to the substantive standard of Section 7(a)(2) so that the languge of the Act is consistent throughout.

SECTION 3

Section 3(1)

Section 3(1) amends Section 4(b)(1) of the Act to require the Secretary to conduct a review of the status of the species before proposing to list the species as endangered or threatened. Section 4(c)(2) of the Act already requires the Secretary to conduct a "status review" of species identified in petitions to list species. During testimony in oversight hearings, and in its written report entitled "Endangered Species—A Controversial Issue Needing Resolution," the General Accounting Office (GAO) criticized the Department of the Interior for failing to adequately review the status of species before proposing them for the list. The GAO argued in several instances, that if the Fish and Wildlife Service had conducted status reviews to obtain adequate information on proposed species, including the development of the latest and best available scientific data as required by the Act, the species may never have been proposed in the first place.

Section 3(1) would require status reviews to determine whether enough scientific and biological data exists to warrant proposing a species for listing as endangered or threatened. These reviews may include, as appropriate, communication with experts in the field such as: regional, area and field staff, university professors in the affected area, professional organizations and journals, local citizens, state agencies, as well as concerned Federal agencies, such as the Corps of Engineers, the U.S. Geological Survey, or the Environmental Protection Agency.

Section 3(2)

Section 3(2) amends the public notice provisions of the Act to require the publication of a summary of the text of the regulation in local newspapers, rather than the complete text. The Secretary would be required to include a map of the proposed critical habitat in the newspaper notice. The maps of proposed critical habitats currently published by the Secretary in the Federal Register are sufficient to comply with this provision.

Although the conferees believe that it is unnecessary to publish the complete text of critical habitat proposals in local newspapers to give adequate notice to affected communities, the conferees believe that the summary should include sufficient detail to inform local residents of the major elements of the listing proposal. In most cases these elements will include the biological justification for the listing, the justification for the critical habitat designation, and a brief description of the activities that may adversely modify the critical habitat, or may be impacted by the designation of such habitat.

Section 3(3)

Section 3(3) amends Section 4(f)(2)(B)(iv)(II) of the Act to require public meetings and hearings on critical habitat proposals to be held separately. Individuals requesting a public hearing would have to communicate their request to the Secretary within 15 days after the date on which the public meeting was conducted.

The Congress enacted subsection (f)(2)(B)(iv)(II) last year to improve the flow of information on endangered species proposals to the local communities that will be most impacted by the listing and critical habitat designation. A public meeting is intended to be an informal exchange of information on the regulatory proposal. The conferees do not expect or require the Secretary to provide a court reporter at these meetings. The purpose of the public meeting is essentially to provide an opportunity for local citizens to engage in a colloquy with Departmental representatives about the reasons for the listing and critical habitat designation and the potential impact of the listing on activities in the area. The meeting should also provide an opportunity for the Departmental representatives to become more familiar with the concerns of the local community.

The purpose of a public hearing, if requested, is to provide a more formal opportunity for local residents to comment on the listing and designation proposal, after they have had an opportunity to become familiar with the proposal in the public meeting. It is intended that a verbatim transcript of such hearing be made and be available upon request.

The conferees recognize that there will be added costs as a result of the bifurcation of the meeting and hearings. The conferees do not intend to require the Secretary to republish the substance of the regulatory proposal in a local newspaper prior to the public hearing. Obviously, the Department will have to provide adequate notice of the time and place of the public hearing by publication in the Federal Register and a newspaper of general circulation in the local area if such a hearing is requested.

Section 3(4)

Section 3(4) amends the emergency regulation provision of the Act to clarify that the Secretary may list a species and designate critical habitat under this provision without first complying with Section 4(b)(4) of the Act. Section 4(b)(4) requires the Secretary to consider the economic and other relevant impacts of designating an area as critical habitat. This amendment does not absolve the Secretary from complying with Section 4(b)(4) or any other provision of the Act before the species is listed under Section 4(a) of the Act.

Section 3(5)

Section 3(5) amends the emergency listing provision to include plant species in addition to fish and wildlife. It also extends the emergency time period to 240 days. Currently, actions under this section are limited to 120 days. The conferees recognize that the 1978 Amendments added substantially to the procedural requirements of the Act. Since all of the requirements of the Act must be complied with prior to listing under Section 4(a), the time during which an emergency regulation can remain in effect must be significantly increased.

Section 3(6)

Section 3(6) requires the Secretary to establish agency guidelines to insure that the purposes of Section 4 of the Act are achieved efficiently and effectively. The GAO report on the Endangered Species Act criticized the Department of Interior for failing to formulate and publish guidelines and procedures to govern the implementation and administration of the Act. The GAO noted that petitions filed with the Department had been misplaced and that the Department failed to adequately implement any of the many listing and recovery priority systems. The conferees believe that the Department is well on its way toward resolving these problems. This amendment is intended to insure that these procedures are adequately developed and implemented. The House amendment required the development of these procedures by regulation. The conferees believe that the formal regulatory process may inhibit the effective implementation of necessary amendments to these procedures. The conference report merely requires that the procedures be developed by guideline. It does require, however, the Secretary to make the proposed procedures public and to provide an opportunity for comment on them.

Although Section 3(6) requires the development of a listing and recovery priority system, it does not require the listing of species and the implementation of recovery efforts to be suspended pending the development of the guidelines. The conferees note that these systems have already been developed by the Department of the Interior for internal guidance. The Secretary is merely required to publish the details of the systems and solicit comment on them.

SECTION 4

Section 4(1)

The conference report adopts the language of the House amendment to Section 7(a) pertaining to consultation by Federal agencies with the Fish and Wildlife Service and the National Marine Fisheries Service. The amendment, which would require all Federal agencies to ensure that their actions are not likely to jeopardize endangered or threatened species or result in the adverse modification of critical habitat, brings the language of the statute into conformity with existing agency practice, and judicial decisions, such as the opinion in *National Wildlife Federation* v. *Coleman*.

Section 7(b) of the Act requires the Fish and Wildlife Service and the National Marine Fisheries Service to render biological opinions which advise whether or not proposed agency actions would violate Section 7(a)(2). Courts have given substantial weight to these biological opinions as evidence of an agency's compliance with Section 7(a). The amendment would not alter this state of the law or lessen in any way an agency's obligation under Section 7(a)(2).

As currently written, however, the law could be interpreted to force the Fish and Wildlife Service and the National Marine Fisheries Service to issue negative biological opinions whenever the action agency cannot guarantee with certainty that the agency action will not jeopardize the continued existence of the listed species or adversely modify its critical habitat. The amendment will permit the wildlife agencies to frame their Section 7(b) opinions on the best evidence that is available or can be developed during consultation. If the biological opinion is rendered on the basis of inadequate information then the Federal agency has a continuing obligation to make a reasonable effort to develop that information.

This language continues to give the benefit of the doubt to the species, and it would continue to place the burden on the action agency to demonstrate to the consulting agency that its action will not violate Section 7(a)(2). Furthermore, the language will not absolve Federal agencies from the responsibility of cooperating with the wildlife agencies in developing adequate information upon which to base a biological opinion. If a Federal agency proceeds with the action in the face of inadequate knowledge or information, the agency does so with the risk that it has not satisfied the standard of Section 7(a)(2) and that new information might reveal that the agency has not satisfied the standard of Section 7(a)(2).

The conferees added a new paragraph (3) to Section 7(a). This provision is nearly identical to the House language and requires Federal agencies to confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed as endangered or threatened. This language grew out of the recommendations of the General Accounting Office. The GAO suggested that Federal agencies be required to consult on proposed species in addition to those that are formally listed as endangered or threatened.

The intent of the provision is to require Federal agencies to begin informal discussions with the wildlife agencies of the Federal Government about the possible adverse impact of agency actions on proposed species. The informal discussions can be initiated by either the wildlife agency or the action agency.

The new provision, Section 7(a)(3), does not require Federal agencies to enter into formal Section 7 consultation under subsection (a)(1) or (2). Nor does subsection (a)(3) require Federal agencies or permit or license applicants to refrain from making irreversible or irretrievable commitments of resources which have the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives to the agency action. Section 7(d) of the Act does place a limitation on the commitment of resources after the initiation of formal Section 7(a)(2) consultation on listed species, but not species proposed for listing.

The conferees note that the purpose of a listing proposal is to determine whether a species is endangered or threatened and should be listed as such. The protections of Section 7 should not apply until a species has been formally listed. The conferees also note that the Supreme Court made it abundantly clear in *Tennessee Valley Authority* v. *Hill* that the prohibitions of Section 7 apply regardless of the state of completion of the project. 11 ERC 1705, 1717 (1978). Obviously, Federal agencies irreversibly committing resources and foreclosing alternatives to an action that is likely to jeopardize a proposed species do so with the risk that the species will eventually be formally listed and the prohibitions of Section 7 will become applicable. The conferees do not believe that any Federal agency or permittee should make any irreversible or irretrievable commitments of resources for the purpose or with the intent of foreclosing otherwise reasonable alternatives or in order to secure an exemption pursuant to Section 7(h).

Section 4(2)

Section 4(2) makes a technical change in the language of Section 7(b) of the Act to insure that the language of the Act is consistent throughout.

Section 4(3)

Section 4(3) adopts the provisions of the House amendment which make technical changes in a variety of sections of the Act to insure that the language of the Act is consistent throughout.

Section 4(4)

Section 4(4) adopts provisions appearing in both the Senate bill and the House amendment. This section authorizes all persons with standing to file for an exemption to conduct a biological assessment. The conferees adopted the House language which requires the biological assessments conducted under this section to be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

The existing law requires Federal agencies to conduct biological assessments on major Federal actions initiated after November 10, 1978 and designed primarily to result in the building or erection of dams, buildings, pipelines and the like. The change proposed by Section 4(4) is significant because, for the first time, it authorizes all exemption applicants to receive a permanent exemption. Section 7(h)(2) of the Act identifies the completion of a biological assessment as a prerequisite to receiving a permanent exemption. Biological assessments are designed to assist Federal agencies in determining whether Section 7(a)(2) consultation should be initiated by identifying endangered or threatened species that may be present in the area affected by their proposed project and by identifying the impacts of those projects on such species. Because the exemption may be permanent, even as to those species not identified in a biological assessment, it is important that the assessment be as complete and thorough as possible so that future conflicts can be avoided. Subjecting privately conducted assessments to the supervision and scrutiny of the Federal agency and the Secretary will assist the development of adequate assessments.

Section 4(5)

Section 4(5) makes a technical change in Section 7(d) of the Act to insure that the language of the statute is consistent throughout.

Section 4(6)

Section 4(6) amends Section 7(g)(1) of the Act to conform the language of subsection (g)(1) to the substantive standard of Section 7(a)(2).

Section 4(7)

Section 4(7) of the conference report amends Section 7(g)(2)(A) of the Act to provide that, in the case of an action involving a permit or license applicant, an application for exemption may not be filed until after final agency action for purposes of chapter 7 of title 5 of the United States Code (5 U.S.C. 701-706).

The Senate bill and the House amendment contained essentially similar provisions intended to clarify provisions of existing law with respect to the timeliness of an exemption application where a permit or license application is involved. The conferees adopted the House modification.

The term "permit or license applicant" is defined in the Act to mean any person whose permit or license application has been denied primarily because of the application of Section 7(a) to such agency action. Section 7(g)(2)(A) of the Act currently requires applications to be filed not later than 90 days after the completion of the consultation process. The existing language of the Act has resulted in confusion in those instances when a bilogical opinion has been issued although the Federal agency has not taken final action with respect to the permit at issue. The conference report clarifies the intent of the 1978 Amendments by providing that applications for exemptions in these circumstances should not be filed until after final agency action on the permit or license application at issue.

The exemption process was designed to resolve endangered species conflicts after other administrative remedies, including consultation have been exhausted. It makes no sense to initiate an exemption process before it has been determined that there is a need for an exemption in the first place. This provision insures exemption applications will be filed, in cases involving permit or license applicants, when the application is ripe for review.

The term "final agency action" is used in the same sense as it is employed in the judicial review provisions of the Administrative Procedure Act (5 U.S.C. 701-706). Thus, an application for an exemption can be filed at the same time that the action becomes judicially reviewable under 5 U.S.C. 704.

The conferees retained the exemption filing period provided in existing law for agency actions other than those involving a permit or license applicant. Thus, if a Federal agency decides that it cannot comply with the requirements of Section 7 after consultation with the wildlife agency, it can file for an exemption within 90 days of that decision. The conferees retained this provision of the existing law because of the realization that there may be many agency actions not involving a "permit or license applicant". It may be difficult in these instances to determine when the final agency action occurred. The Federal agency should be permitted to file for an exemption only after it has, however, complete consultation with the wildlife agency on the action and decided that it cannot proceed in light of the requirements of Section 7(a)(2).

The conferees note that the definition of "agency action" in the Act could lead to multiple exemptions applications for the same project. Federal agencies and permittees should attempt to consolidate all applications which involve substantially similar factual and legal issues.

Section 4(8)

Section 4(8) resolves the problem posed by the division of responsibility over marine and terrestrial species by the Departments of Interior and Commerce. This section requires the Secretaries of Interior and Commerce to jointly convene a review board in those instances where both Departments have issued negative biological opinions for the same agency action.

Section 4(9)

Section 4(9) adopts the House language which clarifies the application of the threshold requirements of Section 7(g)(5) of the Act to the Federal agency and the exemption applicant. Section 7(g)(5) provides that the review board shall make a determination whether the exemption application has (i) carried out its consultation responsibilities, (ii) conducted any biological assessment required of it, and (iii) refrained from making commitments of resources prohibited by Section 7(d). Section 4(9) of the conference report makes it clear that these requirements apply to the Federal agency and the exemption applicant. This is intended to insure that all of the threshold requirements are complied with regardless of the identity of the exemption applicant. The consultation requirement of Section 7(a)(2), for example, only applies to Federal agencies. Federal agencies should not be permitted to avoid their consultation responsibilities by having a permittee apply for an exemption.

The conferees note that the language of Section 4(9) is not intended to add responsibilities to exemption applicants not already required by the statute. For example, the biological assessment requirement of Section 7(c) applies only to Federal agencies. Federal permittees should not conduct a biological assessment, although a biological assessment is required of a permittee or licensee in order to receive a permanent exemption under Section 7(h)(2).

Section 4(10)

Section 4(10) makes a technical amendment to Section 7(g)(6).

Section 4(11)

Section 4(11) amends Section 7(h)(2) of the Act to provide that exemptions granted by the Endangered Species Committee shall be permanent with respect to all endangered or threatened species for the purposes of completing such agency action, (i) regardless whether the species was identified in the biological assessment, and (ii) only if a biological assessment has been conducted on the agency action.

The section provides that the exemption will be permanent unless the Secretary finds that the exemption would result in the extinction of a species not the subject of consultation or not identified in any biological assessment, and the Endangered Species Committee determines within 60 days that the exemption should not be permanent. The provision requires the Committee to meet within 30 days of the Secretarial finding.

Section 4(11) is intended to give some certainty and predictability to those exemption applicants that have succeeded in receiving an exemption through the exemption process, if the applicant has conducted a biological assessment under the terms of Section 7(c). This section does allow, however, for a reconsideration of the permanent exemption in the limited instance where the Secretary finds that the exemption will result in the extinction of species that were not identified in a biological assessment or not identified during consultation. Even in this limited instance, however, the Committee must affirmatively vote not to continue the exemption.

The Conferees recognize that this provision raises the possibility that an exemption granted for an agency action because of a conflict with one species, will also apply to the same agency action even if a subsequent species is discovered. The conferees note, however, that the language of Section 7(a)(2) will require consultation on any listed species identified in the biological assessment until the time that the Endangered Species Committee grants the agency action an exemption from the requirements of Section 7.

Section 4(12)

Section 4(12) authorizes to be appropriated $600,000 to the Secretary to assist the review boards and the Endangered Species Committee in carrying out their functions during fiscal years 1980, 1981 and 1982.

SECTION 5

Section 5 adopts the House language which authorizes the Secretary to encourage foreign nations to develop programs for the conservation of endangered and threatened plants. This section also permits the Secretary to assign Departmental personnel for the purpose of cooperating with foreign countries and international organizations in the promotion of the conservation of plant species. The conferees recognize that the conservation of endangered and threatened species worldwide often requires the United States to share its expertise in this area with other governments and institutions. The conferees intend this provision to authorize the Secretary to share staff, at his discretion, with such organizations as the International Union for the Conservation of Nature and Natural Resources.

SECTION 6

Section 6 completely repeals Section 8(e) of the Act and replaces it with a new Section 8A. This Section establishes the Secretary of the Interior as the Scientific Authority and the Management Authority for purposes of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Secretary is required to carry out these functions through the United States Fish and Wildlife Service.

Under the existing Act, and Executive Order 11911, the Secretary is designated the Management Authority and a seven member inter-agency committee is designated the existing Scientific Authority. Section 6 removes the functions of the Scientific Authority and places them with the Secretary of the Interior acting through the Fish and Wildlife Service. The conferees believe that this arrangement will facilitate the coordinated implementation of the Endangered Species Convention without weakening the United States' important role in the conservation of endangered species worldwide.

Section 6 also establishes an independent advisory commission composed of the following:

(A) One member appointed by each of the following Federal Officers:

(i) The Secretary of the Interior,

(ii) The Secretary of Agriculture,

(iii) The Secretary of Commerce,

(iv) The Director of the National Science Foundation, and

(v) The Chairman of the Council on Environmental Quality.

(B) One member appointed by the Secretary from among officers and employees of State fish and wildlife agencies; and

(C) The Secretary of the Smithsonian Institution is invited to appoint a member.

With the exception of the State fish and wildlife representative, the agencies represented on the advisory commission are identical to the agencies represented on the existing Endangered Species Scientific Authority (ESSA). The State fish and game official essentially replaces the representative of the Department of Health, Education and Welfare on the existing ESSA. The heads of the various agencies represented on the advisory commission are free to appoint the individual now representing them on the ESSA to the Commission, although they are not required to do so.

The conferees established an independent commission to insure that the Scientific Authority receives unbiased scientific advice on those matters within the responsibility of the Scientific Authority from a multi-disciplined group. This should insure that the Scientific Authority receives scientific advice from a wide spectrum of public and private individuals with biological expertise.

Although Section 6 establishes an independent advisory commission, the Section requires the Secretary to carry out his Scientific Authority functions through the Fish and Wildlife Service. Under the existing law, the Secretary carries out his Management Authority responsibilities through the Wildlife Permit Office of the Fish and Wildlife Service. This section requires the Secretary to establish a similar arrangement within the Fish and Wildlife Service for his Scientific Authority responsibilities. The Secretary of the Interior retains the ultimate responsibility to make those decisions required of the Scientific Authority and the Management Authority by the International Convention.

The Section requires the Secretary to provide the necessary staff and administrative support for the Commission. The conferees anticipate that the staff requirements of the Commission should parallel the requirements of the existing ESSA. The conferees suggest that the Commission advise the Secretary on the staff and funding needs of the Commission.

The conferees want to emphasize that the unit of the Fish and Wildlife Service assigned to carry out the responsibilities of the Scientific Authority should not share or exchange staff with the Commission. The purpose of the Commission is to provide independent scientific advice to the Scientific Authority. This purpose would be frustrated by commingling the Commission staff with those of the Fish and Wildlife Service unit assigned by the Secretary to carry out the functions of the Scientific Authority.

Section 6 requires the Commission to make recommendations to the Secretary or his designee on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention. If the Scientific Authority disagrees with any recommendation made by the Commission, he is required to provide the Commission with a written explanation of the reasons for his decision. The Secretary's explanation, along with any findings required by the Convention, should be published in the Federal Register. The Secretary's explanation should be sufficiently detailed to adequately inform the Commission of the nature of the evidence relied on by the Secretary in reaching his decision. The Secretary should provide an opportunity for public comment on all Management Authority and Scientific Authority decisions.

Section 6 designates the Secretary of the Interior as the Management Authority for purposes of the Convention. The conferees note that the Endangered Species Act of 1973 and Reorganization Plan Number 4 of 1970 vests jurisdiction in certain marine species in the Secretary of Commerce. The conferees believe that on any Management Authority action involving these marine species the Secretary should consult with the National Oceanic and Atmospheric Administration within the Department of Commerce and implement the NOAA recommendations in this area.

SECTION 7

Section 7 adopts the House amendment to Section 10(f) of the Act. This amendment will permit the extension of the so-called "scrimshaw" exemption for an additional three years. It will permit the owners of certain whale parts and products which were held in stock prior to 1973 to continue trading such products for an additional three years. The conferees wish to emphasize that this represents the last extension of Section 10(f) of the Act. Three years ago, the holders of these products, primarily scrimshaw artists in New England and the Pacific Northwest, represented to the Congress that they would be able to dispose of their pre-Act holdings within three years. They were wrong. This provision will allow these individuals an additional three years, but no longer, to dispose of these products.

SECTION 8

Section 8 adopts the authorization levels for the Departments of the Interior and Commerce recommended by the Senate. These authorization levels will permit a much-needed expansion of the endangered species program budget in the 1981 and 1982 fiscal years.

Section 8 adopts the House amendment authorizing funds to the Department of Agriculture to carry out their functions and responsibilities with respect to the enforcement of the Act and the Convention which pertain to the importation or exportation of terrestrial plants. The evidence presented to the Congress suggests that the Department of Agriculture has failed to adequately regulate trade in endangered and threatened plants because of an absence of sufficient and qualified enforcement personnel. The conferees note that this authorization is limited to the Department of Agriculture's responsibilities for the enforcement of the importation and exportation of plants. It is not intended to restrict the level of funding available to the Department of Agriculture to carry out habitat acquisitions and other programs for the conservation of endangered and threatened species.

John M. Murphy,
John Breaux,
John D. Dingell,
David R. Bowen,
Paul N. McCloskey, Jr.,
Edwin B. Forsythe,
Managers on the Part of the House.
John C. Culver,
Edmund S. Muskie,
Gary Hart,
John H. Chafee,
Robert T. Stafford,
Managers on the Part of the Senate.

[From the Congressional Record, Dec. 19, 1979]

HOUSE AGREED TO CONFERENCE REPORT ON S. 1143

CONFERENCE REPORT ON S. 1143, ENDANGERED SPECIES ACT AUTHORIZATION

Mr. MURPHY of New York. Mr. President, I call up the conference report on the Senate bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. Minish). Pursuant to the rule the conference report is considered as having been read.

The SPEAKER pro tempore. The gentleman from New York (Mr. Murphy) will be recognized for 30 minutes, and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York (Mr. Murphy).

Mr. MURPHY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report on S. 1143, would authorize appropriations to carry out the Endangered Species Act through fiscal year 1982. I can unequivocably say that the House conferees have retained each and every major provision of the bill as passed by the House.

The Endangered Species Act has been extremely controversial for several years now. The 95th Congress substantially amended the Endangered Species Act by establishing an exemption process for all projects that develop conflicts with endangered species. Under these amendments any project can be considered for an exemption from the requirements of the act by a seven-member committee. This committee is composed of representatives of several Federal agencies as well as the representative of the State involved.

Although the 1978 amendments were developed after extensive hearings and markup sessions in the Merchant Marine and Fisheries Committee, several Members of the House expressed concerns last year that the House be given an opportunity to review the Endangered Species Act again in the 96th Congress after the General Accounting Office completed its review of the administration of the act.

We have kept that pledge that we made to these Members in the House last year. The General Accounting Office report has been completed and oversight hearings on that report have been conducted. The Department of the Interior has initiated steps to correct nearly all of the deficiencies cited by the GAO report.

The GAO and the administration also suggested several legislative changes to clarify some of the provisions in the 1978 amendments. The conference report includes several of these amendments.

The major issue for the House this year involved the implementation of the Convention on International Trade in Endangered Species. The gentleman from Louisiana, who is also the chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, offered an amendment to the bill which established the Secretary of the Interior as the Scientific Authority under the terms of the convention. Under the convention, the U.S. designates two agencies—a Management Authority and a Scientific Authority—to administer trade involving species whose survival is threatened by commercial exploitation. The U.S. Management Authority resides in the Interior Department, while the Scientific Authority is composed of seven natural scientists, from various executive departments. The gentleman's amendment would have transferred the Scientific Authority functions to the Secretary of the Interior and would have established the existing membership of the Scientific Authority as an advisory group within the Fish and Wildlife Service of the Department of the Interior.

A number of wildlife conservation organizations expressed concern that this arrangement would hinder the ability of the Secretary to receive independent scientific advice from the various naturalists represented on ESSA. The compromise agreed to by the House and Senate conferees retains the basic structure of the House-passed version, but introduces some significant changes to accommodate the concerns of the environmental community.

First, the conference report removes the Scientific Advisory Commission from the Fish and Wildlife Service and makes the Advisory Commission independent. Second, it requires the Secretary to respond to the recommendations of the Advisory Commission, and explain why any recommendation is not accepted. Third, it requires the Scientific Authority to publish its responses to Commission recommendations in the Federal Register. Fourth, Education, and Welfare with a State Fish and Game Official appointed by the Secretary. And fifth, it allows the election of the chairman of the Advisory Group by the membership of the Commision.

The conference report addresses the basic concern of the gentleman from Louisiana—that the Scientific Authority be within a single Department of the Federal Government so that the decisions of the Authority are accountable to both the Congress and the executive branch. The conference report, however, also significantly responds and addresses the concerns of the conservation community by establishing a wholly independent Scientific Advisory Commission. This Commission will be authorized to advise the Secretary on all Scientific Authority matters. The Secretary will have to give serious consideration to these recommendations and he will have to explain to the independent advisory commission why it is that he is not accepting their recommendations.

The conference report retains all of the provisions of the amendments offered by the gentleman from Mississippi (Mr. BOWEN). These amendments will help clarify some important provisions of the 1978 amendments. The conference report does extend the emergency listing time period to 240 days. The conferees determined that the additional procedural requirements added to the act last year justify extending the time during which a species can be listed on an emergency basis.

Congress has taken a long, hard, and sometimes painful look at the Endangered Species Act. The Subcommittee on Fisheries and Wildlife Conservation and the Environment conducted 8 days of oversight hearings on the act last year. They conducted 3 more days of hearings this year. The General Accounting Office investigated the operation of the endangered species program. The committee has evaluated the GAO report. In short, the administration of the endangered species program has been analyzed in excruciating detail.

We believe that many of the problems with the Endangered Species Act that have been discussed over the last several years have been adequately addressed by the Congress. It is now time to give this act a needed rest, and to allow the departments to begin to implement and administer the recently enacted amendments.

The Endangered Species Act is good, sound, and very necessary environmental legislation. I do not believe that any of us here would like to see the bald eagle, the grizzly bear, or the gray wolf vanish. I doubt that we would like to see the purposeful extermination of many of the less romantic species when there are reasonable alternatives available to conserve these species. That is what the act and what the amendments adopted over the last 2 years provide.

I urge that the House adopt the conference report on S. 1143.

Mr. **Forsythe**. Mr. Speaker, I rise in support of the conference report which will extend the authorization for the Endangered Species Act for 3 years and make certain amendments to the act. The amendments which were adopted by the committee of conference essentially parallel the bill as it passed the House.

The amendments add a new perspective and balance to the Endangered Species Act by clarifying the purpose and intent of the 1978 amendments. The committee of conference has, for example, adopted language which provides that Federal agencies are no longer held to the standard of guaranteeing that their actions will in no way have any adverse effects on an endangered species or its critical habitat. Instead, the conferees have adopted language approved by the House which establishes that Federal agencies must only insure that their actions "are not likely to" have an adverse effect on endangered species or their critical habitats. By replacing the ironclad statutory standard with something which does not require an absolute, 100 percent guarantee, the conferees have taken a major step forward to insure that needed balance is preserved in the Endangered Species Act.

The conferees have also preserved the House language providing that once an exemption is granted for a project, that exemption should be permanent unless it will result in the extinction of a species and, even then, the exemption should remain permanent unless the Endangered Species Committee specifically decides to overturn a previously approved exemption. Once an exemption is granted it should, to the maximum extent possible, be considered as a project exemption, and not a species exemption.

The conference report makes several other amendments to the act which are fully explained in the report and which I believe substantially improve the operation of this important statute. The Endangered Species Act is landmark legislation which firmly establishes that this Nation's policy is to be in favor of conserving and protecting the fish, wildlife, and plant resources of this Nation. It is estimated that every decade approximately 20 species become extinct in the United States, and an even greater number enter the endangered category. If this rate applies worldwide, then an estimated 300 species could become extinct every 10 years. The endangered species program is designed to halt this unacceptable trend and to improve the quality of life in America by conserving our natural wildlife and plant resources. I believe it is an important act which must be extended and I urge the adoption of the conference report.

Mr. Speaker, I have no further requests for time.

Mr. HUGHES. Mr. Speaker, I rise in strong support of the conference report on the Endangered Species Act authorization. I believe it is a good report, that carries out the intent of the House bill.

The conference report preserves the basic integrity and spirit of the act, which is to protect those species that have become threatened or endangered through man's activities. It also proposes a number of relatively minor changes that will make the act more workable.

One of the key proposed changes is the provision to place the Endangered Species Scientific Authority under the jurisdiction of the Secretary of the Interior. This provision was adopted by the House several weeks ago. It would make certain that our Government speaks with one voice, not two, when it administers trade regulations aimed at protecting agencies threatened by commercial exploitation.

At present, ESSA is an independent scientific agency that stands apart from any other Federal agency. It has the authority to issue far-reaching regulations that can cancel out the effect of Interior Department regulations. This arrangment, quite clearly, could result in stalemates and inaction by our Government in regulating trade in threatened or endangered species.

The conference report would clear up this bureaucratic mess. It places ESSA within the Interior Department. It thereby insures that our country will have only one policy and one set of regulations to protect wildlife threatened by the pressures of international trade.

The conference report also makes several other administrative improvements in the act. It requires the Secretary of Interior to establish priority systems for the listing and recovery of endangered species. Such systems can be developed by guidelines, rather than regulation. In addition, the conference report extends the time period in which a species can be given an emergency listing as endangered or threatened. The current law provides a 120-day limit on such listings. The conference report provides a 240-day limit. The report also allows owners of scrimshaw and sperm whale oil to continue to do business for an additional 3 years.

In summary, I feel the conference report represents a strong commitment to continue to protect endangered and threatened species. I urge my colleagues to support it.

Mr. BONIOR of Michigan. Mr. Speaker, I thank the gentleman for yielding.

I also would like to echo the remarks of my colleague, the gentleman from New Jersey, and support the conference report; in particular the work that was done by the staffs of both the House and the Senate and the chairman, the gentleman from Louisiana (Mr. Breaux) and the chairman, the gentleman from New York (Mr. Murphy).

I think it is a piece of legislation that the House can be proud of, and a piece of legislation that will help us move through the whole question of the endangered species in the next decade.

Mr. BREAUX. Mr. Speaker, I rise in support of the conference report on S. 1143. The conference report contains all of the important and significant provisions adopted by the House on this legislation. It includes the amendments offered by the gentleman from Mississippi (Mr. Bowen) authorizing informal consultation on proposed species as well as the amendment requiring the Secretary to conduct a review of the status of species before proposing species for listing as endangered or threatened. The conference report also adopts provisions clarifying that any exemption granted from the act by the Endangered Species Committee would apply to all endangered and threatened species affected by the agency action as long as the exemption applicant had conducted a biological assessment.

The conference report adopts the House provision requiring the Secretary to develop a system prioritizing the listing of endangered and threatened species. Although the House amendment required this system to be developed by regulation, the conferees felt that these systems could be just as adequately developed by departmental guideline, as long as the Department provided, an adequate opportunity for public comment.

The major issue of the conference involved the status of the Endangered Species Scientific Authority. The Subcommittee on Fisheries, and Wildlife Conservation and the Environment conducted oversight hearings on the Scientific Authority last July. Those hearings revealed some very serious problems in the implementation of the International Endangered Species Convention.

In my view, the Scientific Authority had substantially exceeded its authority under the terms of the convention. It was in clear violation of the memorandum of understanding that it had signed with the Management Authority. Despite these violations, no one in the Government could review the unilateral decisions of the ESSA because of the unique independent nature of the Scientific Authority.

I originally drafted an amendment that not only put the Scientific Authority within the Fish and Wildlife Service, but it attempted to interpret the language of the convention for purposes of our domestic law to resolve many of the outstanding problems. A number of individuals in the administration and in the conservation community, objected to several aspects of my original amendment—especially the portion of the amendment that attempted to interpret the language at the convention. I met with the administration and agreed to substantially revise my amendment before offering it on the House floor. My revised amendment established the Secretary as the Scientific Authority and established the existing ESSA as an advisory group within the Fish and Wildlife Service.

The conferees have made further changes in my amendment. It gives a degree of independence to the Advisory Commission that I had originally opposed. It puts the Secretary in the difficult position of having to respond to the recommendations of the Commission and explain why he failed to follow the recommendations.

Nevertheless, I believe that the resolution of this issue proposed by the conference committee is a reasonable one and should be adopted by the House.

I urge the House to adopt the conference report.

Mr. Murphy of New York. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

SENATE AGREED TO CONFERENCE REPORT ON S. 1143

ENDANGERED SPECIES ACT AMENDMENTS—CONFERENCE REPORT

Mr. ROBERT C. BYRD. Mr. President, I submit a report of the committee of conference on S. 1143 and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. Exon). The report will be stated.

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1143) to extend the authorization for appropriations for the Endangered Species Act of 1973, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

Mr. CULVER. Mr. President, just a little more than a year ago, after careful scrutiny, the Senate reauthorized the Endangered Species Act. However, because the reauthorization was for 18 months, Congress was required to consider the act again this year. After additional hearings, review, and extended debate, the House and Senate have approved legislation and the conferees have agreed to a bill to again extend and amend the Endangered Species Act of 1973. The conference report on S. 1143, the Endangered Species Act Amendments of 1979, represents, in my opinion, a good effort by all interested Members at resolving the differences in the House and Senate bills, and I urge my colleagues to adopt it.

The principal issues to be resolved by the conferees was the different provisions regarding the Endangered Species Scientific Authority (ESSA). The Senate did not amend section 8(e) of the act which implements the Convention on International Trade in Endangered Species. The House amended that section by establishing the Secretary of the Interior as the Scientific Authority under the convention and establishing the existing authority as an advisory unit within the U.S. Fish and Wildlife Service.

The conference report designates the Secretary of the Interior as the scientific authority. However, in order to assure the consideration by the Secretary of unbiased scientific advice from a multidisciplined group, the advisory unit, or International Convention Advisory Commission, has been made as independent as possible. The Commission, which consists of representatives from the Departments of the Interior, Agriculture, and Commerce, the National Science Foundation, the Council on Environmental Quality, the Smithsonian Institution, and a representative from the State Fish and Wildlife agencies, has been removed from the Fish and Wildlife Service. In addition, its chairman will be elected by its members. If the Secretary of the Interior, acting as the Scientific Authority, does not accept the recommendations of the Commission he must provide it with a written explanation of his reasons and, along with his other decisions or findings required by the Convention, publish them in the Federal Register.

Under existing practice, at the discretion of the Secretary, the Wildlife Permit Office of the Fish and Wildlife Service has carried out the International Convention's Management Authority responsibilities under the supervision of the Director of the Fish and Wildlife Service. The conference report requires the Secretary to establish a similar arrangement within the Fish and Wildlife Service for his Scientific Authority responsibilities. However, the Secretary of the Interior would still retain the ultimate responsibility to make those decisions required by the Scientific Authority and the Management Authority by the International Convention.

Consultation on proposed species: The conference report requires Federal agencies to confer with the Secretary on actions that are likely to jeopardize species which have been proposed for listing.

Emergency listing time period: The emergency listing time period is extended to 240 days. In addition, plants have been included in the emergency listing provision.

Section 7 standard: The conference report, which would require all Federal agencies to assure that their actions are not likely to jeopardize an endangered species or adversely modify its critical habitat, brings the language of the Endangered Species Act into conformity with existing agency practice an judicial decisions. The amendment does not alter or diminish an agency's obligation under section 7(a)(2) of the act.

Plants: Plants are added to the coverage of section 8 of the act, which authorizes the Secretary to encourage foreign nations to develop fish and wildlife conservation programs.

Scrimshaw exemption: The report extends the present "scrimshaw" exemption for 3 years.

Authorization: $23 million, $25 million, and $27 million for fiscal years 1980, 1981, and 1982, respectively, are authorized for the Department of the Interior. $2.5 million, $3.0 million, and $3.5 million for fiscal years 1980, 1981, and 1982, respectively, are authorized for the Department of Commerce.

In addition, funds are authorized to the Department of Agriculture to carry out its functions under the Endangered Species Act and the Convention of International Trade regarding the importation and exportation of plants.

Again, Mr. President, I urge the Senate to adopt the conference report on the Endangered Species Act Amendments of 1979. As I stated earlier, this act has undergone careful review over the last few years. The proposed report addresses and resolves remaining problems and difficulties with the act while continuing to provide support and protection for endangered and threatened species of plants and wildlife.

Mr. CHAFEE. Mr. President, this conference report was agreed to. It was a case of our side not being completely content with the result; nonetheless, it was agreed upon. The House gave and we gave some so I think the overall results are satisfactory, and I would move the approval of the report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

STATEMENT OF THE PRESIDENT ON SIGNING S. 1143 INTO LAW DECEMBER 28, 1979 (PUBLIC LAW 96-159)

ENDANGERED SPECIES ACT AMENDEMENTS

I am very pleased today to sign into law S. 1143, a 3-year reauthorization of the Endangered Species Act. This act is one of the most far-reaching and progressive laws ever enacted by any nation to protect wildlife and plant resources. Reauthorization of the act has been one of my high legislative priorities.

In addition to reauthorization, the bill I am signing strengthens our endangered species protection program by including plant, as well as animal, species in the emergency listing and international cooperation provisions. The act also authorizes funds to the the Department of Agriculture to enforce provisions related to plants.

The bill revises the procedures for implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Congress has established a strong and independent International Convention Advisory Commission to advise the Secretary of the Interior on Scientific Authority responsibilities related to the convention. The scientific integrity of the convention will be preserved by the Commission's advice on the effects of trade, the listing of species on the convention appendices, and the interpretation and implementation of the convention.

I look forward to and will continue to support the implementation of a vigorous endangered species program.

Note: As enacted, S. 1143 is Public Law 96-159, approved December 28.

ANNOTATED BIBLIOGRAPHY OF HEARINGS

U.S. Congress. House. Committee on Foreign Affairs. Subcommittee on International Organizations. Review of Recent Efforts to Protect Endangered Species. Hearings, 96th Congress, 1st session, May 15 and 24, 1979 (Convention on International Trade in Endangered Species (CITES), Part I). Washington, U.S. Govt. Print. Off., 1979. 63 p.

This hearing on international protection of endangered species was held to review current issues, particularly as they were addressed at the second meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in San Jose, Costa Rica in March 1979.

Testifying on Tuesday, May 15, 1979 were William A. Hayne, Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State; Robert S. Cook, Deputy Director, U.S. Fish and Wildlife Service, Department of the Interior; Richard Parsons, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service; Gerald A. Bertrand, Chief, International Affairs, U.S. Fish and Wildlife Service; and Michael J. Bean, Chairman, Wildlife Program, Environmental Defense Fund.

On Thursday, May 24, 1979 the Honorable John B. Breaux, Chairman of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment testified.

Submitted for the record was a list of nations party to CITES. Appendices include the text of CITES, the introduction to the 1977 annual report for CITES, a list of member organizations of the Monitor Consortium (1979), excerpts from reports from the first and second meetings of the CITES parties, and statements submitted by the Natural Resources Defense Council, Inc. and by the International Association of Fish and Wildlife Agencies.

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Endangered Species. Hearings, 96th Congress, 1st session, April 6-July 27, 1979. Serial no. 96–12. Washington, U.S. Govt. Print. Off., 1979. 356 p.

This document covers three sets of hearings conducted on four days in April and July, 1979. The hearings of April 6 covered endangered species authorization and oversight and the reauthorization bill, H.R. 2218, in particular. Included in the printed hearings are the text of H.R. 2218 and Interior's report on that bill and on S. 1143. Testimony and statements of a number of Federal officials in the Departments of Commerce and the Interior, and of representatives of such private organizations as the National Audubon Society, Defenders of Wildlife, and the National Forest Products Association, inter alia, are included.

The hearings of July 16 dealt with endangered species scientific authority oversight. Numerous Federal, State and private organization representatives testified or provided statements for the record. Particular attention was directed to the case of the American alligator in Louisiana, its biological status and its treatment under the ESL and CITES.

Endangered Species Act oversight hearings were also conducted on July 20 and 27, with particular purpose to review the recently completed General Accounting Office report on the operation and administration of the Endangered Species Act and to analyze the implementation of the 1978 amendments to date.

Testimony and Statements were taken from nearly two dozen individuals including Members of Congress, Federal agency representatives, the private sector of industry, and the private sector of conservation organizations.

U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Resource Protection. Endangered Species Act Reauthorization. Hearings, 96th Congress, 1st session, April 3, 1979. Serial no. 96–H11. Washington, U.S. Govt. Print. Off., 1979. 132 p.

These hearings were held to discuss procedures under the 1978 amendments to the Endangered Species Act providing for an Endangered Species Committee to arbitrate conflicts arising under provisions of the Act, specifically as the Committee considered exemptions under the Act for the Tellico Dam in Tennessee and the Grayrocks Dam in Wyoming. The hearings also addressed portions of the then still draft GAO report on administration of the Act which pertained to the matter of reauthorization.

Testifying were Congressman Duncan of Tennessee, Henry Eschwege of the GAO, Robert Herbst and Lester Silverman of the Department of the Interior, Terry Leitzell of the Department of Commerce, Thomas Lovejoy of the World Wildlife Fund, and Elvis Stahr and John Borneman of the National Audubon Society. Statements for the record were also submitted by the International Primate Protection League, the National Forest Products Association, and the Pacific Marine Fisheries Commission.

PART VI

LEGISLATIVE HISTORY OF THE 1980 AMENDMENTS TO THE ENDANGERED SPECIES ACT

ENDANGERED SPECIES ACT OF 1973, APPROPRIATION AUTHORIZATION (SECTION 6), PUBLIC LAW 96-246

BACKGROUND

Authorization for funding Federal-State cooperative programs under Section 6 of the Endangered Species Act would expire in fiscal year 1981. The following quoted material explaining the purpose and need of the legislation is taken from the legislative report of the House Committee on Merchant Marine and Fisheries (Report No. 96-896, pp. 2-3):

> Section 6 of the Endangered Species Act establishes a mechanism for the development of cooperative endangered species programs with the individual States. Section 6 places the fundamental responsibility for establishing and overseeing an endangered species program in the Federal Government. However, section 6 mandates that the Secretary of Commerce or the Secretary of the Interior, depending upon the species involved, cooperate with the States in carrying out the endangered species program. The cooperation envisioned by section 6 includes consultation with the States concerned before acquiring any land or water under the act and the development of cooperative management agreements with States that establish an adequate and active program for the conservation of endangered and threatened species.
>
> Section 6 resulted from the realization that the successful development of an endangered species program depended upon a good working arrangement between the Federal and State agencies. Although the Federal agencies have the broad policy perspective and authority to carry out the act, the State agencies have the physical facilities and the personnel to see that the State and Federal endangered species policies are properly executed. Once any State qualifies under section 6, it becomes eligible to receive Federal matching grants on a 2 to 1 basis. Section 6 allows return of the management of endangered species to the individual State, along with Federal financial assistance, once the State has adopted an endangered species program which is consistent with, and not weaker than, the Federal program.
>
> In 1977, Congress adopted an amendment to section 6 which was intended to encourage more States to sign cooperative

> agreements with the Department of the Interior. The amendment permitted States to qualify for financial assistance even though their State laws did not give the State wildlife agency the authority for all species within the State that are on the endangered species list. A number of States had objected to providing their wildlife agency with the authority to conserve invertebrates. The amendment allowed a State to qualify for financial assistance if it had complied with all other requirements of the Endangered Species Act and had included plans to devote attention to the endangered species within the State most urgently in need of conservation programs. This amendment has been dramatically successful. Thirty-six States have now signed cooperative agreements with the Department of the Interior.

Public Law 95–212 had authorized $16 million to carry out section 6 during fiscal years 1978 through 1981. Of this amount $4 million remained to be appropriated in fiscal year 1981. H.R. 6839 authorized $12 million to be appropriated in fiscal years 1981 and 1982 to carry out section 6 responsibilities. H.R. 6839, then, restated the authorization through fiscal year 1980, and added $8 million to the amount previously authorized for fiscal years 1981 and 1982.

CHRONOLOGY—PUBLIC LAW 96–246

March 18, 1980.—H.R. 6839 introduced and referred to the Committee on Merchant Marine and Fisheries.

March 21, 1980.—Hearings on H.R. 6839 (and other measures) before the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

March 26, 1980.—Subcommittee orders H.R. 6839 reported, as introduced, to the full Committee.

April 2, 1980.—Full Committtee ordered the legislation reported to the House, without amendment.

April 22, 1980.—H.R. 6839 reported to the House (H. Rept. 96–896) by the Committee on Merchant Marine and Fisheries.

May 5, 1980.—H.R. 6839 considered and approved by the House without amendment.

May 12, 1980.—H.R. 6839 considered and approved by the Senate without amendment.

May 23, 1980.—H.R. 6839 signed into law by the President (Public Law 96–246).

Public Law 96-246
96th Congress

An Act

May 23, 1980
[H.R. 6839]

To authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982.

Endangered Species Act of 1973, appropriation authorization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, **That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is further amended by striking out paragraph (2) of subsection (i) in its entirety and inserting in lieu thereof the following:**

"(2) $12,000,000 for the period beginning October 1, 1977, and ending September 30, 1980.

"(3) $12,000,000 for the period beginning October 1, 1980, and ending September 30, 1982.".

Approved May 23, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-896 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD, Vol. 126 (1980):
May 5, considered and passed House.
May 12, considered and passed Senate.

House Action
H.R. 6839 as Introduced, March 18, 1980 and as Reported Without Amendment by the Committee on Merchant Marine and Fisheries, April 22, 1980

I

96TH CONGRESS
2D SESSION

H. R. 6839

To authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1980

Mr. BREAUX (for himself and Mr. FORSYTHE) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is further amended by striking out paragraph (2) of subsection (i) in its entirety and inserting in lieu thereof the following:

"(2) $12,000,000 for the period beginning October 1, 1977, and ending September 30, 1980.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-896

FEDERAL-STATE COOPERATIVE PROGRAMS

APRIL 22, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MURPHY of New York, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 6839]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 6839) to authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982 having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

THE PURPOSE OF THE LEGISLATION

The purpose of H.R. 6839 is to increase the authorization under Section 6 of the Endangered Species Act for Fiscal Year 1981, and to authorize appropriations for Fiscal Year 1982. Section 6 provides Federal matching grants to States that have developed State Endangered Species programs.

LEGISLATIVE BACKGROUND

H.R. 6839 was introduced on March 18, 1980 by Mr. Breaux and cosponsored by Mr. Forsythe. The legislation was referred to the Departments of the Interior and Commerce for comments.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on the legislation on March 20, 1980. The Subcommittee received testimony on the legislation from Lynn Greenwalt, Director, U.S. Fish and Wildlife Service, Department of the Interior, and Paul Lenzini on behalf of the International Association of Fish and Wildlife Agencies. Mr. Greenwalt suggested that the legislation retain the existing $4 million authorization level for Fiscal Year 1981. He recommended an authorization of such sums as may be necessary for Fiscal Years 1982 through 1984. Mr. Lenzini testified to the critical need of the State Fish and Wildlife Agencies for augmented endangered species funding. He suggested funding authority of $7, $9, and $11 million for Fiscal Years 1981, 1982 and 1983, respectively. He also suggested that the Federal/State matching ratio be changed from two-to-one, as it is at present, to three-to-one, which is the matching ratio under the Pittman-Robertson and Dingell-Johnson Programs, on which the State Fish and Wildlife Agencies regularly depend for a substantial portion of their annual funding. A change in the matching formula would increase the Federal contributions to the States and there would have to be an increase in the level of Federal funding in order to compensate for the reduced State contribution. If the matching formula were changed, Mr. Lenzini recommended that the authorization contained in H.R. 6839 be increased to $9 million for Fiscal Year 1982, and $13 million for Fiscal Year 1983.

The Subcommittee gave careful consideration to the evidence presented at the hearings and the Departmental Reports. On March 26, 1980 the Subcommittee ordered reported the legislation, as introduced, to the Full Committee. On April 2, 1980 the Full Committee ordered the legislation reported to the House without amendment.

BACKGROUND AND NEED FOR THE LEGISLATION

Section 6 of the Endangered Species Act establishes a mechanism for the development of cooperative endangered species programs with the individual states. Section 6 places the fundamental responsibility for establishing and overseeing an endangered species program in the Federal Government. However, Section 6 mandates that the Secretary of Commerce or the Secretary of the Interior, depending upon the species involved, cooperate with the States in carrying out the Endangered Species Program. The cooperation envisioned by Section 6 includes consultation with the States concerned before acquiring any land or water under the Act and the development of cooperative management agreements with States that establish an adequate and active program for the conservation of endangered and threatened species.

Section 6 resulted from the realization that the successful development of an Endangered Species Program depended upon a good working arrangement between the Federal and State agencies. Although the Federal agencies have the broad policy perspective and authority to carry out the Act, the State agencies have the physical facilities and the personnel to see that the State and Federal endangered species policies are properly executed. Once any State qualifies under Section 6 it becomes eligible to receive Federal matching grants on a two-to-one basis. Essentially then, Section 6 allows return of the management of endangered species to the individual State, along with Federal financial assistance, once the State has adopted an endangered species program which is consistent with, and not weaker than, the Federal program.

In 1977 Congress adopted an amendment to Section 6 which was intended to encourage more States to sign cooperative agreements with the Department of the Interior. The amendment permitted States to qualify for financial assistance even though their State laws did not give the State wildlife agency the authority for all species within the

State that are on the endangered species list. A number of States had objected to providing their wildlife agency with the authority to conserve invertebrates. The amendment allowed a State to qualify for financial assistance if it had complied with all other requirements of the Endangered Species Act and had included plans to devote attention to the endangered species within the State most urgently in need of conservation programs. This amendment has been dramatically successful. Thirty-three States have now signed cooperative agreements with the Department of the Interior and have established State endangered species programs. Another 11 States are in the process of developing agreements with the Department of the Interior. The following chart lists the States with completed and pending agreements.

CHART 1

States with ongoing programs, States with new cooperative agreements to be funded from the second allocation, and States expected to sign cooperative agreements this year.

Ongoing programs, 22 States

Arkansas, California, Colorado, Delaware, Florida, Georgia, Maine, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, Washington, and Wisconsin.

New Agreements, 11 States

Alaskan, Idaho, Illinois, Iowa, Kansas, Massachusetts, Montana, Nevada, New Hampshire, Utah, and Virgin Islands.

Agreements Expected, 6 States

Guam, Hawaii, Minnesota, Mississippi, Ohio, and Puerto Rico.

The following chart indicates the allocation of funds in Fiscal Years 1977, 1978, 1979 and 1980 under section 6.

CHART 2

ALLOCATIONS OF FEDERAL FUNDS FOR ONGOING ENDANGERED SPECIES GRANTS, NOV. 16, 1979

[In thousands of dollars]

State	1977	1978	1979	1980	Total
Arkansas	60.0	70.0	80.7	50.0	260.7
California	450.0	1,384.0	1,630.0	815.0	4,279.0
Colorado	100.0	1,418.0	881.5	415.6	2,815.1
Delaware	4.3	15.4	10.6	10.0	40.3
Florida	96.1	105.8	383.2	230.0	815.1
Georgia	0	160.0	397.8	114.0	671.8
Maine	10.0	10.0	0	0	20.0
Maryland	132.9	190.5	164.1	65.0	552.5
Michigan	154.9	309.2	331.0	165.5	960.6
Missouri	45.0	148.5	75.1	48.0	316.6
Nebraska	0	23.8	27.7	23.8	75.3
New Jersey	20.0	737.1	58.1	30.0	845.2
New Mexico	0	25.7	25.7	12.9	64.3
New York	226.8	366.5	402.8	165.0	1,161.1
North Carolina	0	176.9	370.1	215.0	762.0
Pennsylvania	0	178.7	178.7	60.0	417.4
South Carolina	106.6	116.8	117.1	70.0	410.5
South Dakota	45.0	25.0	60.6	35.1	165.7
Tennessee	0	53.5	269.1	100.0	422.6
Virginia	29.2	37.1	67.5	30.0	163.8
Washington	73.0	84.1	155.7	77.9	390.7
Wisconsin	14.6	81.3	175.3	87.7	358.9
Total	1,568.4	5,717.9	5,862.4	2,820.5	15,969.2

SEC. 6 AUTHORIZATIONS AND APPROPRIATIONS

[In millions of dollars]

	1978	1979	1980	1981
Authorized	$16 million for 4 yr			
Appropriated	4.0	3.0	5	
Obligated	[1] 5.7	5.8	5	

[1] A portion obligated from previous fiscal year appropriation.

Although the Section 6 program has been in full operation for only a short period of time, there have been a number of significant accomplishments. Some 17 critical areas in 5 States either have been acquired, or plans are underway for their acquisition, for the protection of 11 different species. Some of the nation's most celebrated species have benefited. For the Peregrine Falcon, for instance, 23 active nests have been located and protected. Reproduction has been augmented at 6 nests and this has resulted in the propagation of 16 new birds. In California, preparations are underway to acquire the 703 acre Palisades Ecological Reserve and the 400 acre Little Butte Ecological Reserve for the Peregrine Falcon. In Colorado, work is being performed on egg shell thinning which has resulted from chemical contamination and on analyzing prey for pesticide residues. In Florida, annual surveys assess the number and size of Brown Pellican colonies, their reproductive success and pesticide levels. Florida is also providing some 100 young birds annually to Louisiana for rebuilding the populations in that State. Cooperative efforts for the reestablishment of the Peregrine Falcon and the Bald Eagle are underway in New York, New Jersey, Maryland, and Virginia.

Section-by-Section Analysis

Section 1

Section 1 of the legislation authorizes $12 million to be appropriated in fiscal years 1981 and 1982 to carry out section 6 of the Endangered Species Act. P.L. 95-212 authorized $16 million to carry out section 6 during fiscal years 1978 through 1981. $4 million of this previous authorization remains to be appropriated in 1981. H.R. 6839, then, restates the authorization through fiscal year 1980, and adds $8 million to the amount previously authorized for fiscal year 1981.

Cost of the Legislation

In the event the legislation is enacted into law, and the authorized funding is fully appropriated, the maximum cost to the Federal Government for Fiscal Years 1981 and 1982, the life of the legislation, would be $12 million. The Committee accepts the cost and outlay estimate of the Congressional Budget Office.

Inflationary Impact Statement

Pursuant to Clause 2(l) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 6839 would have no inflationary impact on the prices and costs in the national economy.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of Clause 2(1)(3) of Rule XI of the Rules of the House of Representatives:

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment held 3 days of oversight hearings on the Endangered Species Act during the 96th Congress on July 16, 20 and 27, 1979. In addition, the Subcommittee held a day of hearings on H.R. 6839.

(B) The requirements of Section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to Clause 2(b)(2) of Rule X.

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to Section 403 of the Congressional Budget Act of 1974 in reference to H.R. 6839 and follows herewith:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 14, 1980.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 6839, a bill to authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 6839.

2. Bill title: A bill to authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982.

3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, April 2, 1980.

4. Bill purpose: H.R. 6839 amends section 6 of the Endangered Species Act of 1973 to authorize the appropriation of $12 million for fiscal years 1981 and 1982.

5. Cost estimate:

Net additional authorization:

Fiscal year:	***Millions***
1981	$2
1982	6
1983	-----
1984	-----
1985	-----

Estimated outlays:

Fiscal year:	Millions
1981	-----
1982	$5
1983	3
1984	-----
1985	-----

The costs of this bill fall within budget function 300.

6. Basis of estimate: Section 6 of the Endangered Species Act of 1973 allows the federal government to give eligible states matching grants for the development of endangered species programs. Current law authorizes the appropriation of $16 million between October 1, 1977 and September 30, 1981. To date, all but $4 million of that amount has been appropriated. This bill replaces the previous authorization with a new $12 million authorization for fiscal years 1981 and 1982. The new authorization represents the $4 million that has been authorized but not yet appropriated (and therefore is no additional cost to the government), plus an additional $8 million for fiscal years 1981 and 1982. For the purposes of this estimate, it is assumed that $6 million will be appropriated in 1981 (including the $4 million already authorized), and the remaining $6 million in 1982. Based on information from the Department of the Interior, it is estimated that the $2 million of new authorization for 1981 will not be spent until fiscal year 1982, due to a backloge of requests from states for grants. It is estimated that half of the $6 million in 1982 funds will be spent that year and that the remainder will be spent in fiscal year 1983.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Blaire French.

10. Estimate approved by:

C. G. NUCKOLS,
For JAMES L. BLUM,
Assistant Director for Budget Analysis.

DEPARTMENTAL REPORT

H.R. 6839 was the subject of a report from the Department of the Interior and follows herewith:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 4, 1980.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 6839, a bill "To authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982."

We recommend that H.R. 6839 be enacted if amended as suggested herein.

H.R. 6839 would extend the authorization of the Federal-State cooperative program established by section 6 of the Endangered Species Act by authorizing the appropriation of $12,000,000 for the period beginning October 1, 1980 and ending September 30, 1982.

The purpose of section 6 is to provide a funding base to States to assist them in initiating and maintaining endangered species conservation programs. Funds are provided on a ⅔–⅓ Federal/States cost-sharing basis. The Federal share is increased to 75 percent when two or more States cooperate in work on species. Funds are apportioned on the basis of several criteria set forth in the law, including the readiness and ability of a State to proceed with these conservation efforts and the relative urgency of the program.

To qualify for grants under the original section 6 program, States must first enter into a cooperative agreement with the Department of the Interior. This agreement demonstrates that the State (1) has the legal authority to conserve and protect resident species; (2) has established an acceptable conservation program; (3) is authorized to conduct investigations on the status of resident fish and wildlife; (4) has the authority to acquire habitat or interests therein; and (5) has provided for public participation in the designation of resident species as threatened or endangered.

Although the Act was signed into law in 1973, the first cooperative agreements were not entered into by the States until 1976. This was because while a few States, including California, Colorado, New Jersey, and New York, had already instituted their own endangered species programs, most had not ventured into this relatively new realm of fish and wildlife conservation. One impediment was lack of State matching funds. Another was lack of experience on the part of fish and game administrators whose activities had been restricted primarily to the management of game species. Yet another was lack of legal authority over some of the species placed on the Federal list.

A significant catalyst in getting States to participate in endangered species programs was an amendment adopted by Congress in 1977 which facilitated qualification by the States for section 6 programs. The 1973 Act specified that before a State can enter into an endangered species cooperative agreement, it must have the authority to conserve all resident fish and wildlife species which the Secretary determines to be threatened or endangered. A number of State fish and wildlife agencies, however, have the authority to conserve only certain categories of resident species, such as vertebrates, and were therefore unable to qualify for section 6 assistance. The 1977 amendment permits a State to enter into a "limited authorities" cooperative agreement for those listed species which the Service and the State conclude are most urgently in need of attention. The State must also develop a conservation program for those species which is acceptable to the Service. It is also important to note that another amendment in 1978 also made endangered plants eligible for cooperative agreement funding. Largely as a result of these revisions, the number of States which qualify for the section 6 program has increased from 16 in 1977 to an anticipated 35 in fiscal year 1980.

Although the section 6 program has been in full operation for only a short period of time, accomplishments have been significant. Among these has been the protection through acquisition and other means of vital habitats which support threatened and endangered species. Some 17 critical areas in 5 States either have been acquired or plans are underway for their acquisition for the protection of 11 different species. Some of the Nation's most celebrated species have benefited. For the peregrine falcon, for instance, 23 active nests have been located and protected. Reproduction has been augmented at 6 nests and this has resulted in the propagation of 16 new birds. In California preparations are underway to acquire the 703 acre Palisades ecological reserve and 400 acre Little Butte ecological reserve for the bird. In Colorado work is being done on eggshell thinning, which has resulted from chemical contamination and on analyzing prey for pesticide residues. In all, 14 States currently have on-going programs aimed at the conservation of this species.

In Florida, annual surveys assess the number and size of brown pelican colonies, their reproductive success and pesticide level in eggs. Florida is also providing some 100 young birds annually to Louisiana for rebuilding depleted colonies in that State. Cooperative efforts for the re-establishment of the peregrine falcon and bald eagle are underway in New York and New Jersey and in Maryland and Virginia. The elusive black-footed ferret is the subject of an intensive search by Nebraska, New Mexico, Colorado, and South Dakota. The big-eared bat, once thought to be extinct, has been found in 2 caves in Arkansas, and efforts are being made to enhance their populations.

As can be expected, State requests for section 6 funding has increased proportionally with the number of cooperative agreements which have been signed. An initial approach of $2 million was made in February 1976, $1.4 million of which was made in August of that year when 16 States became eligible for program grants. By the end of fiscal year 1977, a total of $1.6 million had been allocated for 16 State programs, compared to a total appropriation of $6 million. In 1978, a total of $5.7 million was allocated for 22 States. In 1979, allocations totaled $5.9 million. Both the 1978 and 1979 allocations made use of unobligated appropriations from prior years. For fiscal year 1980 we have allocated all of the $5 million appropriation. This amount, however, will still fall short of total projected State demands, forcing us to prioritize our grant decisions to make the most cost-effective use of the available money.

For fiscal year 1980 $12 million of the $16 million authorized by Congress for fiscal years 1978–1981 has been appropriated and will be allocated. This leaves $4 million of the $16 million authorization available for the States in fiscal year 1981. In our view, this amount will permit the States to undertake their highest priority endangered species projects. As for authorizations beyond fiscal year 1981, we recommend H.R. 6839 be amended to authorize such sums as may be necessary for fiscal years 1982, 1983, and 1984, thus allowing total flexibility as to actual funding requirements.

In addition, we recommend that the Congress extend funding for sections 7 and 15, (which expire in fiscal year 1982) through fiscal year 1984 in order to synchronize authorizations for the entire Act.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

David Hales,
Acting Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic; existing law in which no change is proposed is shown in roman):

16 U.S.C. 1535

* * * * * * *

(i) For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

(1) $10,000,000 through the period ending September 30, 1977.

[(2) $16,000,000 for the period beginning October 1, 1977, and ending September 30, 1981.]

(2) $12,000,000 for the period beginning October 1, 1977, and ending September 30, 1980.

(3) $12,000,000 for the period beginning October 1, 1980, and ending September 30, 1982.

[From the Congressional Record, May 5, 1980]

HOUSE CONSIDERATION AND PASSAGE OF H.R. 6839, WITHOUT AMENDMENT

ENDANGERED SPECIES ACT AUTHORIZATIONS

Mr. **BREAUX**. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6839) to authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982.

The Clerk read as follows:

H.R. 6839

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6 of the Endangered Species Act of 1973 (16 U.S.C. 1535) is further amended by striking out paragraph (2) of subsection (i) in its entirety and inserting in lieu thereof the following:

"(2) $12,000,000 for the period beginning October 1, 1977, and ending September 30, 1980.

"(3) $12,000,000 for the period beginning October 1, 1980, and ending September 30, 1982.".

The **SPEAKER** pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Louisiana (Mr. Breaux) will be recognized for 20 minutes and the gentleman from New Jersey (Mr. Forsythe) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. Breaux).

Mr. **BREAUX**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 6839 is a noncontroversial measure to authorize appropriations to provide funding to individual States to carry out State endangered species programs. The legislation authorizes to be appropriated $8 million of new funds for fiscal years 1981 and 1982.

Section 6 of the Endangered Species Act is a very important provision which allows for extensive involvement of State fish and wildlife agencies in the management of endangered species within their States. Section 6 provides for Federal matching grants on a 2-to-1 basis to State agencies which have developed a qualified endangered species program. Section 6 resulted from the realization that the successful development of an endangered species program depends upon a good working arrangement between the Federal and State agencies. State agencies have the physical facilities and the personnel to effectively carry out these programs. We believe that it is absolutely vital that the State fish and wildlife agencies, which have the primary authority in this country for the management of resident species, become more involved in the endangered species program.

In 1977, Congress adopted an amendment to section 6 which was intended to encourage more States to enter the program. The amendment permitted States to qualify for financial assistance even though their State laws do not give the State wildlife agency the authority for all species within the State that are on the list. This amendment has been dramatically successful in encouraging State participation. I believe it will eventually reduce the level of Federal involvement in this program. Thirty-three States have now signed cooperative agreements with the Department of the Interior and have established State endangered species programs. Another 11 States are in the process of developing agreements with the Department of the Interior.

The dramatic increase in the number of States participating in this program since 1977 justifies a modest increase in the funding level for this program. In 1977, when only 17 States were participating in the effort, we authorized $4 million per year under this section. Now that the number of States qualifying for assistance has increased dramatically, we believe that an increase is appropriate. H.R. 6839 proposes to authorize an additional $8 million for fiscal years 1981 and 1982. Under existing law, there only remains $4 million to be authorized in fiscal year 1981. This level is not sufficient to retain the existing State programs. It is far below the demonstrated State needs.

Although the authorization level proposed here is modest, we recognize that every Government program must play a part in the effort to balance the budget. The State fish and wildlife agencies asked for a higher level than is provided in this bill. We have not recommended that higher level. The authorization provided here will, however, allow the States to fund their highest priority projects.

This is a small program but it plays an important part in our continuing effort to turn the endangered species program into a successful effort and to reduce the level of controversy in the program. The States have the expertise and they have the tradition of wildlife management. It is in all of our interests to encourage them to participate actively in this effort.

Mr. FORSYTHE. Mr. Speaker, when the Endangered Species Act was passed, it was clear that the Federal Government would never have the resources necessary to address the conservation needs of every species which would be listed as endangered. The conservation and management of endangered species will not and cannot proceed effectively without the assistance and cooperation of the States.

Section 6 of the Endangered Species Act establishes a mechanism for the development of cooperative endangered species programs with the individual States. Section 6 places the fundamental responsibility for establishing and overseeing an endangered species program in the Federal Government but it mandates that the Secretary of Commerce or the Secretary of the Interior, depending upon the species involved, cooperate with the States in carrying out that program. Section 6 resulted from the realization that the successful development of an endangered species program depended upon the cooperation and assistance of the State agencies. It was in this spirit that section 6 allowed the return of the management of endangered species to the individual State. To facilitate this process, section 6 provides for Federal matching grants to the States once the State has adopted an endangered species program which is consistent with, and not weaker than, the Federal program.

Thirty-four States have now signed cooperative agreements with the Department of the Interior and have established State endangered species programs. Another 11 States are in the process of developing agreements with the Department. To assist these States in carrying out their endangered species programs and to place the management of endangered species where it can best be done—with the States—I urge adoption of H.R. 6839.

Mr. MURPHY of New York. Mr. Speaker, the purpose of H.R. 6839 is to increase the amount of funds available to the States for carrying out endangered species programs under section 6 of the Endangered Species Act of 1973.

In accomplishing this purpose, H.R. 6839 would extend the program for 1 additional year, through fiscal year 1982, and authorize to be appropriated $12 million for the 2-year period, fiscal years 1981 and 1982.

Mr. Speaker, section 6 of the Endangered Species Act establishes a mechanism for the development of cooperative endangered species programs with the individual States, section 6 places the fundamental responsibility for establishing and overseeing an endangered species program in the Federal Government. However, the success of any program to manage endangered species depends upon a good working arrangement between the Federal and State agencies since the State agencies have the physical facilities and the personnel to see that State and Federal endangered species policies are properly executed. Once a State has submitted its proposal and qualifies for participation under the section 6 program, it becomes eligible to receive Federal matching grants on a 2-to-1 basis and the management of endangered species is returned to that State.

Thus far, 33 States, of which my State of New York is one, have signed cooperative agreements with the Department of the Interior and have established endangered species programs. Since entering into an agreement in 1977, my State of New York has received $1.1 million of Federal funds to assist it in carrying out an endangered species program.

Mr. Speaker, there are a number of additional States in the process of developing agreements and these additional funds are necessary if we are going to provide some startup funding for these States. H.R. 6839 was reported unanimously by the Committee on Merchant Marine and Fisheries and it has the strong support of the Department of the Interior and of the International Association of Fish and Wildlife agencies.

I urge its prompt passage.

Mr. FORSYTHE. Mr. Speaker, I yield back the balance of my time.

Mr. BREAUX. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. Breaux) that the House suspend the rules and pass the bill, H.R. 6839.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

[From the Congressional Record, May 12, 1980]

SENATE CONSIDERATION AND PASSAGE OF H.R. 6839, WITHOUT AMENDMENT

ENDANGERED SPECIES ACT AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House on H.R. 6839.

The Presiding Officer. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6839) to authorize appropriations under the Endangered Species Act of 1973 to carry out State cooperative programs through fiscal year 1982.

Mr. Robert C. Byrd. Mr. President, I ask unanimous consent that the bill be considered as having been read the first and second time and that the Senate proceed to its immediate consideration.

The Presiding Officer. Is there objection to the present consideration of the bill?

There being no objection, the bill (H.R. 6839) was considered, ordered to a third reading, read the third time, and passed.

[From the Congressional Record, May 28, 1980]

H.R. 6839 Signed Into Law, May 23, 1980 (Public Law 96–246) Without Statement

New Public Laws

H.R. 6839, authorizing funds under the Endangered Species Act to carry out State cooperative programs through fiscal year 1982. Signed May 23, 1980 (Public Law 96–246).

Annotated Bibliography of Hearing and a Committee Print

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. National Wildlife Refuges. Hearings, 96th Congress, 2d session. September 27, October 29, 30, December 7, 1979; March 21, 1980. Serial No. 96–27. Washington, U.S. Govt. Print. Off., 1980. 584 p.

All of the hearings in this volume conducted in 1979 dealt with national wildlife refuges. On March 21, 1980 the hearings dealt with three bills; two of them concerned the proposed Bogue Chitto and Bon Secour national wildlife refuges, and the third, H.R. 6839, provided for authorization of the Federal-State cooperative agreements under section 6 of the 1973 Endangered Species Act. The material in this volume on the subject is the print of the bill, H.R. 6839 (p. 535) and the report of the Department of the Interior on the bill (pp. 536–538), together with the testimony of the Director of the U.S. Fish and Wildlife Service and his Associate Director (pp. 556–567) and their response to questions from Congressmen Breaux and Wyatt. Also in this volume with respect to H.R. 6839 is the testimony of Paul Lenzini, Legal Counsel of the International Association of Fish and Wildlife Agencies, and his response to questions from Congressmen Breaux and Wyatt (pp. 572–579).

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Subcommittee on Fisheries and Wildlife Conservation and the Environment. Oversight Report on the Administration of The Endangered Species Act and The Convention on International Trade in Endangered Species of Wild Fauna and Flora. April 7, 1980. Serial No. 96-D. Washington, U.S. Govt. Print. Off., 1980. 28 p.

This Committee Print reports on the conclusions and recommendations of the Subcommittee on Fisheries and Wildlife Conservation and the Environment as a result of the oversight hearings it conducted in July 1979 in review of the GAO report on the Endangered Species Act and of implementation of the 1978 Amendments to the Act, and also of its review of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). With respect to the ESA, the Subcomittee noted: "The Committee believes that the administration of the Endangered Species Act has been thoroughly and extensively reviewed in the 95th and 96th Congresses. The Act has been substantially amended to introduce a greater degree of flexibility into its administration. The Committee does not believe that further amendments of the Endangered Species Act are necessary to equitably balance economic and environmental concerns." With respect to CITES, the Subcommittee noted a number of institutional and procedural problems with respect to U.S. trade policy in endangered and threatened species. The Committee noted the changes made in the ESA regarding U.S. management and scientific authorities vis-a-vis CITES and expressed its hope the increased accountability addressed by the 1979 amendments to the Act would enable the Secretary of the Interior to "restore order to the program for regulating trade in endangered and threatened wildlife."

PART VII

UNOFFICIAL CODIFIED VERSON OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED THROUGH DECEMBER 31, 1980[1]

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[1] Source: Environmental Law Reporter, April 1980: 41825–41833. Reprinted With Permission. N.B. 16 USC § 1535(h)(1) (2) and (3) [ESA § 6(h)(1) (2) and (3)] was amended, subsequent to publication of this ELR version, by Public Law 96–246. That additional amendment was incorporated in this ELR text by CRS, in order to provide a completely up-to-date codified version of the Act through the end of the 96th Congress.

Endangered Species Act of 1973
16 U.S.C. §§1531–1543

§ 1531. [ESA §2]
  Congressional findings and declaration of purposes and policy
§ 1532. [ESA §3]
  Definitions
§ 1533. [ESA §4]
  Determination of endangered species and threatened species
    (a) Generally
    (b) Basis for determinations
    (c) Lists
    (d) Protective regulations
    (e) Similarity of appearance cases
    (f) Regulations
    (g) Recovery plans
    (h) Agency guidelines; publication in Federal Register; scope; proposals and amendments; notice and opportunity for comments
§ 1534. [ESA §5]
  Land acquisition
§ 1535. [ESA §6]
  Cooperation with States
    (a) Generally
    (b) Management agreements
    (c) Cooperative agreements
    (d) Allocation of funds
    (e) Review of State programs
    (f) Conflicts between Federal and State laws
    (g) Transition
    (h) Regulations
    (i) Authorization of appropriations
§ 1536. [ESA §7]
  Interagency cooperation
    (a) Federal agency actions and consultations
    (b) Opinion of Secretary
    (c) Biological assessment
    (d) Limitation on commitment of resources
    (e) Endangered Species Committee
    (f) Promulgation of regulations; form and contents of exemption application
    (g) Submittal of application for exemption; consideration by appointed review board; convening of Board by Secretaries of Interior and Commerce; report to Committee
    (h) Grant of exemption
    (i) Review by Secretary of State; violations of international treaty or other international obligation of United States
    (j) Exemption for national security reasons
    (k) Exemption decision not considered major federal action; environmental impact statement
    (*l*) Committee order granting exemption; cost of mitigation and enhancement measures; report by applicant to Council on Environmental Quality
    (m) Notice requirement for citizen suits not applicable
    (n) Judicial review
    (*o*) Exemption as providing exception on taking of endangered species
    (p) Exemptions in Presidentially declared disaster areas
    (q) Authorization of appropriations
§ 1537. [ESA §8]
  International cooperation
    (a) Financial assistance
    (b) Encouragement of foreign programs
    (c) Personnel
    (d) Investigations
    (e) repealed
§ 1537a. [ESA §8A]
  Convention implementation
    (a) Management Authority and Scientific Authority
    (b) Management Authority functions
    (c) Scientific Authority functions
    (d) International Convention Advisory Commission; establishment, membership, agency representation, qualifications, term, reappointment, travel expenses and per diem, additional compensation prohibition; chairman, election and term; voting; dissents, other views and expertise; publication in Federal Register; reasons for nonacceptance decision; Executive Secretary, appointment; duties and functions; competitive service, classification, and pay rate provisions applicable; staff and administrative support for Commission
    (e) Wildlife Preservation in Western Hemisphere
§ 1538. [ESA §9]
  Prohibited acts
    (a) Generally
    (b) Species held in captivity or controlled environment
    (c) Violation of Convention
    (d) Imports and exports
    (e) Reports
    (f) Designation of ports
    (g) Violations
§ 1539. [ESA §10]
  Exceptions
    (a) Permits
    (b) Hardship exemptions
    (c) Notice and review
    (d) Permit and exemption policy
    (e) Alaskan natives
    (f) Pre-Act endangered species parts exemption; application and certification; regulation; validity of sales contract; separability of provisions; renewal of exemption; expiration of renewal certification
    (g) Burden of proof
    (h) Certain antique articles; importation; port designation; application for return of articles
    (i) Tellico and Grayrocks Projects; design and operation of Missouri Basin Power Project
§ 1540. [ESA §11]
  Penalties and enforcement
    (a) Civil penalties
    (b) Criminal violations
    (c) District court jurisdiction
    (d) Rewards
    (e) Enforcement
    (f) Regulations
    (g) Citizen suits
    (h) Coordination with other laws
§ 1541. [ESA §12]
  Endangered plants
§ 1542. [ESA §15]
  Authorization of appropriations
§ 1543. [ESA §17]
  Construction with Marine Mammal Protection Act of 1972

§ 1531. [ESA §2]

Congressional findings and declaration of purposes and policy

The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through

Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

Pub.L. 93-205, § 2, Dec. 28, 1973, 87 Stat. 884; Pub.L. 96-159, § 1, Dec. 28, 1979, 93 Stat. 1225.

Effective Date. Section 16 of Pub.L. 93-205 provided that "This Act [enacting this chapter, amending sections 460k-1, 460l-9, 668dd, 715i, 715s, 1362, 1371, 1372 and 1402 of this title and section 136 of Title 7, Agriculture, repealing sections 668aa to 668cc-6 of this title, and enacting provisions set out as notes under this section] shall take effect on the date of its enactment [Dec. 28, 1973]."

Short Title of 1978 Amendment. Pub.L. 95-632, § 1, Nov. 10, 1978, 92 Stat. 3751, provided "That this Act [amending sections 1532 to 1536, 1538 to 1540, and 1542 of this title] may be cited as the 'Endangered Species Act Amendments of 1978'."

Short Title. Section 1 of Pub.L. 93-205 provided "That this Act [enacting this chapter, amending sections 460k-1, 460l-9, 668dd, 715i, 715s, 1362, 1371, 1372 and 1402 of this title and section 136 of Title 7, Agriculture, repealing sections 668aa to 668cc-6 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Endangered Species Act of 1973'."

§ 1532. [ESA §3]

Definitions

For the purposes of this chapter—

(1) The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however*, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.

(3) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.

(7) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term "import" means to land on, bring into, or introduce into; or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) The term "irresolvable conflict" means, with respect to any action authorized, funded, or carried out by a Federal agency, a set of circumstances under which, after consultation as required in section 1536(a) of this title, completion of such action would violate section 1536(a)(2) of this title.

(12) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 1536 of this title, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 1536(a) of this title to such agency action.

(13) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(14) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this chapter and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(16) The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) the term "State agency" means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term "United States", when used in a geographical context, includes all States.

Pub.L. 93-205, § 3, Dec. 28, 1973, 87 Stat. 885; Pub.L. 94-359, § 5, July 12, 1976, 90 Stat. 913; Pub.L. 95-632, § 2, Nov. 10, 1978, 92 Stat. 3751; Pub.L. 96-159, § 2, Dec. 28, 1979, 93 Stat. 1225.

§ 1533. [ESA §4]

Determination of endangered species and threatened species

Generally

(a)(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

At the time any such regulation is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat. The requirement of the preceding sentence shall not apply with respect to any species which was listed prior to November 10, 1978.

Basis for determinations

(b)(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

(4) In determining the critical habitat of any endangered or threatened species, the Secretary shall consider the economic impact, and any other relevant impacts, of specifying any particular area as critical habitat, and he may exclude any such area from the critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Lists

(c)(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range.

(2) The Secretary shall, within 90 days of the receipt of the petition of an interested person under section 553(e) of Title 5, conduct and publish in the Federal Register a review of the status of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review. Such review and finding shall be made and published prior to the initiation of any procedures under subsection (b)(1) of this section.

(3) Any list in effect on December 27, 1973, of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification for endangered species or threatened species, as the case may be, provided for in this chapter, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this chapter. The republication of any species pursuant to this paragraph shall not require public hearing or comment under section 553 of Title 5.

(4) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.

Protective regulations

(d) Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title, in the case of fish or wildlife, or section 1538(a)(2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535(a) of this title only to the extent that such regulations have also been adopted by such State.

Similarity of appearance cases

(e) The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

Regulations

(f)(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of Title 5 (relating to rule-making procedures) shall apply to any regulation promulgated to carry out the purposes of this chapter.

(2)(A) Except as provided in subparagraph (B), in the case of any regulation proposed by the Secretary to carry out the purposes of this chapter—

(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

(ii) if any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the Federal Register.

(B) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

(i) not less than 60 days before the effective date of the regulation, shall publish—

(I) a general notice and the complete text of the proposed regulation in the Federal Register, and

(II) if the proposed regulation specifies any critical habitat, general notice of the regulation (including a summary of the text, and a map of the proposed critical habitat) in a newspaper of general circulation within or adjacent to such habitat;

(ii) shall offer for publication in appropriate scientific journals the substance of the Federal Register notice referred to in clause (i)(I);

(iii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat, if any; and

(iv) shall—

(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation within or adjacent to the area in which the endangered or threatened species is located, if request therefor is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested within 15 days after the date on which the public meeting is conducted, hold a public hearing in each such State.

If a public meeting or hearing is held on any regulation, the regulation may not take effect before the 60th day after the date on which the meeting or hearing is concluded, and if more than one public meeting or hearing is held, before the 60th day after the date on which the last such meeting or hearing is concluded. Any accidental failure to provide actual notice under clause (iii) to all general local governments required to be given notice shall not invalidate the proposed regulation.

(C) Neither subparagraph (A) or (B) of this paragraph, subsection (b)(4) of this section, nor section 553 of Title 5 shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take effect immediately upon publication of the regulation in the Federal Register:

(i) Any regulation appropriate to carry out the purposes of this chapter which was originally promulgated to carry out the Endangered Species Conservation Act of 1969.

(ii) Any regulation (including any regulation implementing section 1535(g)(2)(B)(ii) of this title) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish, wildlife, and plants the requirements of subsection (b)(1)(A) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best scientific and commercial data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulations.

(4) Any proposed or final regulation which specifies any critical habitat of any endangered species or threatened species shall be based on the best scientific data available, and the publication in the Federal Register of any such regulation shall, to the maximum extent practicable, be accompanied by a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be impacted by such designation.

(5) A final regulation adding a species to any list published pursuant to subsection (c) of this section shall be published in the Federal Register not later than two years after the date of publication of notice of the regulation proposing such listing under paragraph (B)(1)(I). If a final regulation is not adopted within such two-year period, the Secretary shall withdraw the proposed regulation and shall publish notice of such withdrawal in the Federal Register not later than 30 days after the end of such period. The Secretary shall not propose a regulation adding to such a list any species for which a proposed regulation has been withdrawn under this paragraph unless he determines that sufficient new information is available to warrant the proposal of a regulation. No proposed regulation for the listing of any species published before November 10, 1978 shall be withdrawn under this paragraph before the end of the one-year period beginning on November 10, 1978.

Recovery plans

(g) The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments

(h) The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (c)(2) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review for listing; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (g) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guidelines (including any amendment thereto) proposed to be established under this subsection.

Pub.L. 93-205, § 4, Dec. 28, 1973, 87 Stat. 886; Pub.L. 94-359, § 1, July 12, 1976, 90 Stat. 911; Pub.L. 95-632, §§ 11, 13, Nov. 10, 1978, 92 Stat. 3764, 3766; Pub.L. 96-159, § 3, Dec. 28, 1979, 93 Stat. 1225.

References in Text. The Federal Advisory Committee Act, referred to in subsec. (g), is set out in the Appendix to Title 5, Government Organization and Employees.

The Endangered Species Conservation Act of 1969, referred to in subsecs. (c)(2) and (f)(2)(B)(i), was classified to section 668aa et seq. of this title.

§ 1534. [ESA §5]

Land acquisition

(a) The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 1533 of this title. To carry out such a program, the appropriate Secretary—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section.

Pub.L. 93-205, §5, Dec. 28, 1973, 87 Stat. 889; Pub.L. 95-632, §12, Nov. 10, 1978, 92 Stat. 3766.

References in Text. The Fish and Wildlife Act of 1956, as amended, referred to in subsec. (a)(1), is classified to section 742a et seq. of this title.

The Fish and Wildlife Coordination Act, as amended, referred to in subsec. (a)(1), is classified to section 661 et seq. of this title.

The Migratory Bird Conservation Act, referred to in subsec. (a)(1), is classified to section 715 et seq. of this title.

The Land and Water Conservation Fund Act of 1965, as amended, referred to in subsec. (b), is classified to section 460l-4 et seq. of this title.

§ 1535. [ESA §6]

Cooperation with States

Generally

(a) In carrying out the program authorized by this chapter, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

Management agreements

(b) The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 715s of this title.

Cooperative agreements

(c)(1) In furtherance of the purposes of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this chapter, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened; or

that under the State program—

(i) the requirements set forth in subparagraphs (C), (D) and (E) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 1533(d) of this title or section 1538(a)(1) of this title with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this chapter, for all resident species of plants in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plants; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

that under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 1533(d) or section 1538(a)(1) of this title with respect to the taking of any resident endangered or threatened species.

Allocation of funds

(d)(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this chapter;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66⅔ per centum of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

Review of State programs

(e) Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

Conflicts between Federal and State laws

(f) Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter. This chapter shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.

Transition

(g)(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on December 28, 1973, and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after December 28, 1973, or (B) the date of the close of the 15-month period following December 28, 1973.

(2) The prohibitions set forth in or authorized pursuant to sections 1533(d) and 1538(a)(1)(B) of this title shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to subsection (c) of this section (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of Title 5 or any other provision of this chapter; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

Regulations

(h) The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

Authorization of appropriations

(i) For the purposes of this section, there are authorized to be appropriated not to exceed the following sums:

(1) $10,000,000 through the period ending September 30, 1977.

(2) $12,000,000 for the period beginning October 1, 1977, and ending September 30, 1980.

(3) $12,000,000 for the period beginning October 1, 1980, and ending September 30, 1982.

Pub.L. 93-205, § 6, Dec. 28, 1973, 87 Stat. 889; Pub.L. 95-212, Dec. 19, 1977, 91 Stat. 1493; Pub.L. 95-632, § 10, Nov. 10, 1978, 92 Stat. 3762; Pub.L. 96-246, May 23, 1980, 94 Stat. 348.

§ 1536. [ESA §7]

Interagency cooperation

Federal agency actions and consultations

(a)(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 1533 of this title or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d) of this section.

Opinion of Secretary

(b) Consultation under subsection (a)(2) of this section with respect to any agency action shall be concluded within 90 days after the date on which initiated or within such other period of time as is mutually agreeable to the Federal agency and the Secretary. Promptly after the conclusion of consultation, the Secretary shall provide to the Federal agency concerned a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. The Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) of this section and can be taken by the Federal agency or the permit or license applicant in implementing the agency action.

Biological assessment

(c)(1) To facilitate compliance with the requirements of subsection (a)(2) of this section, each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on November 10, 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 4332 of Title 42.

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

Limitation on commitment of resources

(d) After initiation of consultation required under subsection (a)(2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.

Endangered Species Committee

(e)(1) There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this section for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.
(B) The Secretary of the Army.
(C) The Chairman of the Council of Economic Advisors.
(D) The Administrator of the Environmental Protection Agency.
(E) The Secretary of the Interior.
(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) of this section shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of Title 5.

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) Except in the case of a member designated pursuant to paragraph (3)(G) of this subsection, no member shall designate any person to serve as his or her representative unless that person is, at the time of such designation, holding a Federal office the appointment to which is subject to the advice and consent of the United States Senate. In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

Promulgation of regulations; form and contents of exemption application

(f) Not later than 90 days after November 10, 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include, but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

Submittal of application for exemption; consideration by appointed review board; convening of Board by Secretaries of Interior and Commerce; report to Committee

(g)(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2) of this section, the Secretary's opinion under subsection (b) of this section indicates that the agency action would violate subsection (a)(2) of this section. An application for an exemption shall be considered initially by a review board in the manner provided in this subsection, and shall be considered by the Endangered Species Committee for a final determination under subsection (h) of this section after a report is made by the review board. The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the completion of the consultation process; or, in the case of any agency action involving a permit or license applicant, not later than 90 days after the date on which the Federal agency concerned takes final agency action, for purposes of chapter 7 of Title 5 with respect to the issuance of the permit or license. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the review board to be established under paragraph (3) and to the Endangered Species Committee for consideration of such application.

(3)(A) A review board shall be established for purposes of considering an application for exemption and submitting a report to the Endangered Species Committee under this subsection as follows:

(i) One individual shall be appointed to the board by the Secretary not later than 15 days after an application is submitted pursuant to paragraph (2).

(ii) One individual shall be appointed to the board by the President, not later than 30 days after an application is submitted pursuant to paragraph (2) and after consideration of any recommendations received pursuant to paragraph (2)(B). An individual appointed by the President under this subparagraph shall be a resident of a State, if any, in which the agency action will be, or is being, carried out.

(iii) One administrative law judge shall be selected to serve on the board by the Civil Service Commission in the same manner as administrative law judges are selected under section 3344 of Title 5 to be detailed to an agency which occasionally or temporarily is insufficiently staffed with administrative law judges. The use by the review board of such an administrative law judge shall be on a reimbursable basis.

(B) If biological opinions of both the Secretary of the Interior and the Secretary of Commerce indicate that an agency action would violate subsection (a)(2) of this section, such Secretaries shall jointly convene a review board to consider any application for exemption filed with respect to such agency action.

(C) Members of a review board who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the board. All other members shall be entitled to receive an amount not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day during which they are engaged in the actual performance of duties vested in the board. While away from their homes or regular places of business in the performance of services for a review board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of Title 5.

(4) The Secretary shall submit the application to the review board immediately after its appointment under paragraph (3), and the Secretary shall submit to the review board, in writing, his views and recommendations with respect to the application within 60 days after receiving a copy of any application under paragraph (2).

(5) It shall be the duty of a review board appointed under paragraph (3) to make a full review of the consultation carried out under subsection (a)(2) of this section, and within 60 days after its appointment or within such longer time as is mutually agreed upon between the exemption applicant and the Secretary, to make a determination, by a majority vote, (A) whether an irresolvable conflict exists and (B) whether the Federal agency concerned and such exemption applicant has—

(i) carried out its consultation responsibilities as described in subsection (a) of this section in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2) of this section;

(ii) conducted any biological assessment required of it by subsection (c) of this section; and

(iii) refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section.

Any determination by the review board that an irresolvable conflict does not exist or that the Federal agency concerned or the exemption applicant has not met its respective requirements under subclause (i), (ii), or (iii) shall be considered final agency action for purposes of chapter 7 of Title 5.

(6) If the review board determines that an irresolvable conflict exists and makes positive determinations under subclauses (i), (ii), and (iii) of paragraph (5), it shall proceed to prepare the report to be submitted under paragraph (7).

(7) Within 180 days after making the determinations under paragraph (6), the review board shall submit to the Committee a report discussing—

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee.

(8) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of Title 5.

(9) In carrying out its duties under this subsection, a review board may, and any member of a review board if so authorized by the review board, may—

(A) sit and act at such times and places, take such testimony, and receive such evidence, as the review board deems advisable;

(B) subject to the Privacy Act of 1974, request of any Federal agency or applicant information necessary to enable it to carry out such duties, and upon such request the head of such Federal agency shall furnish such information to the review board; and

(C) use the United States mails in the same manner and upon the same conditions as a Federal agency.

(10) Upon request of a review board, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the review board to assist it in carrying out its duties under this section.

(11) The Administrator of the General Services Administration shall provide to a review board, on a reimbursable basis, such administrative support services as the review board may request.

(12) All meetings and records of review boards shall be open to the public.

Grant of exemption

(h)(1) The Committee shall make a final determination whether or not to grant an exemption within 90 days of receiving the report of the review board under subsection (g)(7) of this section. The Committee shall grant an exemption from the requirements of subsection (a)(2) of this section for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the review board and on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest; and

(iii) the action is of regional or national significance; and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of Title 5.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) of this section with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) of this section or was not identified in any biological assessment conducted under subsection (c) of this section, and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

Review by Secretary of State; violation of international treaty or other international obligation of United States

(i) Notwithstanding any other provision of this chapter, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

Exemption for national security reasons

(j) Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

Exemption decision not considered major Federal action; environmental impact statement

(k) An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969: *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

Committee order granting exemption; cost of mitigation and enhancement measures; report by applicant to Council on Environmental Quality

(*l*)(1) If the Committee determines under subsection (h) of this section that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) of this section which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

Notice requirement for citizen suits not applicable

(m) The 60-day notice requirement of section 1540(g) of this title shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) Judicial review

(n) Any person, as defined by section 1532(13) of this title, may obtain judicial review, under chapter 7 of Title 5, of any decision of the Endangered Species Committee under subsection (h) of this section in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of Title 28. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

Exemption as providing exception on taking of endangered species

(o) Notwithstanding sections 1533(d) and 1538(a) of this title or any regulations promulgated pursuant to such sections, any action for which an exemption is granted under subsection (h) of this section shall not be considered a taking of any endangered or threatened species with respect to any activity which is necessary to carry out such action.

Exemptions in Presidentially declared disaster areas

(p) In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

Authorization of appropriations

(q) There are authorized to be appropriated to the Secretary to assist review boards and the Committee in carrying out their functions under subsections (e), (f), (g), and (h) of this section not to exceed $600,000 for each of fiscal years 1979, 1980, 1981, and 1982. The Chairman of the Committee shall report to the Congress before the end of fiscal year 1979 with respect to the adequacy of the budget authority contained in this subsection.

Pub.L. 93-205, § 7, Dec. 28, 1973, 87 Stat. 892; Pub.L. 95-632, § 3, Nov. 10, 1978, 92 Stat. 3752; Pub.L. 96-159, § 4, Dec. 28, 1979, 93 Stat. 1226.

[1] So in original. Probably should be "carrying".

References in Text. The Privacy Act of 1974, referred to in subsec. (e)(7)(C) and (g)(8)(B), is classified to section 552a of Title 5, Government Organization and Employees.

GS-18 of the General Schedule, referred to in subsec. (g)(8)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

The National Environmental Policy Act of 1969, referred to in subsec. (k), is classified to section 4321 et seq. of Title 42, The Public Health and Welfare.

The Disaster Relief Act of 1974, referred to in subsec. (p), is classified to section 5121 et seq. of Title 42, The Public Health and Welfare. Sections 401 and 402 thereof are classified to sections 5171 and 5172 of Title 42.

§ 1537. [ESA §8]

International cooperation

Financial assistance

(a) As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 724 of Title 31, use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 1533 of this title. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 1542 of this title.

Encouragement of foreign programs

(b) In order to carry out further the provisions of this chapter, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 1533 of this title;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

Personnel

(c) After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

Investigations

(d) After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this chapter.

(e) **Repealed.** Pub.L. 96-159, § 5(4), Dec. 28, 1979, 93 Stat. 1228.

Pub.L. 93-205, § 8, Dec. 28, 1973, 87 Stat. 892; Pub.L. 96-159, § 5, Dec. 28, 1979, 93 Stat. 1228.

References in Text. The Agricultural Trade Development and Assistance Act of 1954, referred to in subsec. (a), is classified to section 1691 et seq. of Title 7, Agriculture.

§ 1537a. [ESA §8A]

Convention implementation

Management Authority and Scientific Authority

(a) The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

Management Authority functions

(b) The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

Scientific Authority functions

(c) The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

International Convention Advisory Commission; establishment, membership, agency representation, qualifications, term, reappointment, travel expenses and per diem, additional compensation prohibition; chairman, election and term; voting; dissents; other views and expertise; publication in Federal Register; reasons for nonacceptance decision; Executive Secretary; appointment; duties and functions; competitive service, classification, and pay rate provisions applicable; staff and administrative support for Commission

(d)(1) There is hereby established the International Convention Advisory Commission (hereinafter in this section referred to as the "Commission").

(2) The Commission shall be composed of the following members:

(A) One member appointed by each of the following Federal officers from his respective agency:

(i) The Secretary.

(ii) The Secretary of Agriculture.

(iii) The Secretary of Commerce.

(iv) The Director of the National Science Foundation.

(v) The Chairman of the Council on Environmental Quality.

(B) One member appointed by the Secretary from among officers and employees of the State agencies having fish and wildlife conservation and management responsibilities.

(C) The Secretary of the Smithsonian Institution is invited to appoint a member.

(3)(A) Individuals who are appointed as members of the Commission under paragraph (2) must be scientifically qualified.

(B) The term of office of a member of the Commission appointed under paragraph (2)(B) is two years and an individual may be appointed under such paragraph for any number of terms; except that an individual may not be appointed under that paragraph for a term that would be a third consecutive term for that individual under that paragraph.

(C) While away from his home or regular place of business in the performance of services for the Commission, a member appointed under paragraph (2)(B) or (C) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of Title 5 for persons in the Government service employed intermittently.

(D) Members of the Commission who are full-time officers or employees of the United States shall receive no additional compensation on account of their service on the Commission.

(4)(A) The Commission shall elect a chairman from among its members. The term of office of the chairman is one year.

(B) No recommendation referred to in paragraph (5) shall be deemed to be a recommendation of the Commission unless a majority of the members of the Commission vote for that recommendation.

(5) The Commission shall make recommendations to the Secretary or his designee on all matters pertaining to the responsibilities of the Scientific Authority under the terms of the Convention. The Commission shall include with any such recommendation any written dissenting view made by any member.

(6) In the discharge of its responsibilities, the Commission shall, to the extent practicable, ascertain the views of, and utilize the expertise of the governmental and nongovernmental scientific communities, State agencies responsible for the conservation of wild fauna or flora, humane groups, zoological and botanical institutions, recreational and commercial interests, the conservation community and others as appropriate.

(7) In any case in which the Scientific Authority decides not to accept a recommendation made by the Commission under paragraph (5), the Scientific Authority shall provide to the Commission a written explanation of the reasons for that decision and shall publish the explanation in the Federal Register.

(8)(A) The Chairman of the Commission, with the concurrence of the Commission, shall appoint an Executive Secretary for the Commission. The Executive Secretary shall carry out such duties and functions as shall be prescribed by the Commission, shall be appointed subject to the provisions of Title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates.

(B) The Secretary shall provide the necessary staff and administrative support for the Commission.

Wildlife Preservation in Western Hemisphere

(e) The President shall designate those agencies of the Federal Government that shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

Pub.L. 93–205, § 8A, as added Pub.L. 96–159, § 6(a)(1), Dec. 28, 1979, 93 Stat. 1228.

Endangered Species Scientific Authority; Interim Performance of Functions of Commission. Section 6(b) of Pub.L. 96–159 provided that: "Until such time as the Chairman, Members, and Executive Secretary of the International Convention Advisory Commission are appointed, but not later than 90 days after the date of the enactment of this Act [Dec. 28, 1979], the functions of the Commission shall be carried out by the Endangered Species Scientific Authority as established by Executive Order Numbered 11911, with staff and administrative support being provided by the Secretary of the Interior as set forth in that Executive order."

§ 1538. [ESA §9]

Prohibited acts

Generally

(a)(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(C) sell or offer for sale in interstate or foreign commerce any such species; or

(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

Species held in captivity or controlled environment

(b)(1) The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on December 28, 1973, if the purposes of such holding are not contrary to the purposes of this chapter; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from December 28, 1973, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on December 28, 1973.

(2)(A) This section shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

Violation of Convention

(c)(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this title but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter.

Imports and exports

(d)(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

Reports

(e) It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 1533 of this title as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

Designation of ports

(f)(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc-4(d) of this title shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

Violations

(g) It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

Pub.L. 93-205, § 9, Dec. 28, 1973, 87 Stat. 893; Pub.L. 95-632, § 4, Nov. 10, 1978, 92 Stat. 3760.

References in Text. The effective date of the Endangered Species Act Amendments of 1978, referred to subsec. (b)(2), is the effective date of Pub.L. 95-632, which was approved on Nov. 10, 1978.

References in Text. Section 668cc-4(d) of this title, referred to in subsec. (f)(2), was repealed by section 14 of Pub.L. 93-205.

§ 1539. [ESA §10]

Exceptions

Permits

(a) The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species.

Hardship exemptions

(b)(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 1533 of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 1538(a) of this title to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to December 28, 1973, shall expire in accordance with the terms of section 668cc-3 of this title; and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this chapter to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this chapter; or

(C) curtailment of subsistence taking made unlawful under this chapter by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

Notice and review

(c) The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

Permit and exemption policy

(d) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 1531 of this title.

Alaskan natives

(e)(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this chapter. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 1373 of this title, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

Pre-Act endangered species parts exemption; application and certification; regulation; validity of sales contract; separability of provisions; renewal of exemption; expiration of renewal certification

(f)(1) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the etching or engraving of designs upon, or the carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 1538(a)(1)(A) of this title.

(B) Any prohibition set forth in section 1538(a)(1)(E) or (F) of this title.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 1538(a) of this title which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this chapter. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 1533(f)(2)(A)(i) of this title.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 1538(a)(1)(F) of this title.

(B) In the event that this paragraph is held invalid, the validity of the remainder of this chapter, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 1538(a) of this title prior to July 12, 1976; or

(B) immunize any person from prosecution for any such act.

(8)(A) Any person to whom a certificate of exemption has been issued under paragraph (4) of this subsection may apply to the Secretary for renewal of such exemption for a period not to exceed three years beginning on the expiration date of such certificate. Such application shall be made in the same manner as the application for exemption was made under paragraph (3), but without regard to subparagraph (A) of such paragraph.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the original certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

Burden of proof

(g) In connection with any action alleging a violation of section 1538 of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

Certain antique articles; importation; port designation; application for return of articles

(h)(1) Sections 1532(d) and 1538(a) and (c) of this title do not apply to any article (other than scrimshaw) which—

(A) was made before 1830;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 1533 of this title;

(C) has not been repaired or modified with any part of any such species on or after November 10, 1978; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before November 10, 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 1533 of this title;

(B) was forfeited to the United States before November 10, 1978, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 1540 of this title; and

(C) is in the custody of the United States on November 10, 1978;

may, before the close of the one-year period beginning on November 10, 1978, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this chapter.

Tellico and Grayrocks Projects; design and operation of Missouri Basin Power Project

(i)(1) Notwithstanding any other provision of this chapter, the Committee shall, within 30 days of November 10, 1978, proceed to consider the exemption of the Tellico Dam and Reservoir Project and the Grayrocks Dam and Reservoir Project from the requirements of section 1536(a) of this title. For the purposes of such consideration, the Committee shall grant an exemption to such projects if the criteria of section 1536(h)(1)(A)(i) and (ii) of this title are met. A decision on any such exemption shall be made within 90 days after November 10, 1978. If no decision is made within such 90-day period, such project shall be deemed to be exempted from the requirements of section 1536(a) of this title.

(2) Following the rendering of a biological opinion by the United States Fish and Wildlife Service concerning the effect, if any, of the operation of the Missouri Basin Power Project on endangered species or their critical habitat, the responsible officers of the Rural Electrification Administration, the Secretary of the Interior, and the Secretary of the Army, shall require such modifications in the operation or design of the project as they may determine are required to insure that actions authorized, funded, or carried out by them, relating to the Missouri Basin Power Project do not jeopardize the continued existence of such endangered species or result in the destruction or adverse modification of habitat of such species which is or has been determined to be critical by the Secretary of the Interior, after consultation as appropriate with the affected States.

Pub.L. 93-205, § 10, Dec. 28, 1973, 87 Stat. 896; Pub.L. 94-359, §§ 2, 3, July 12, 1976, 90 Stat. 911, 912; Pub.L. 95-632, §5, Nov. 10, 1978, 92 Stat. 3760; Pub.L. 96-159, § 7, Dec. 28, 1979, 93 Stat. 1230.

References in Text. Section 668cc-3 of this title, referred to in subsec. (b), was repealed by section 14 of Pub.L. 93-205.

References in Text. Pre-Act, referred to in subsec. (f), means the period prior to the effective date of the Endangered Species Act of 1973, Dec. 28, 1973. See section 16 of Pub.L. 93-205, set out as a note under section 1531 of this title.

Effective date of this subsection, referred to in subsec. (f)(6)(A), probably means the date of enactment of subsec. (f) by section 2 of Pub.L. 94-359, July 12, 1976.

§ 1540. [ESA §11]

Penalties and enforcement

Civil penalties

(a)(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this chapter, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), or (C), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 1538 of this title, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this chapter may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Any person who otherwise violates any provision of this chapter, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of Title 5. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this chapter, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

Criminal violations

(b)(1) Any person who knowingly violates any provision of this chapter, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), or (C), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 1538 of this title shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this chapter shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this chapter or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this chapter, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

District court jurisdiction

(c) The several district courts of the United States, including the courts enumerated in section 460 of Title 28 shall have jurisdiction over any actions arising under this chapter. For the purpose of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

Rewards

(d) Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this chapter or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

Enforcement

(e)(1) The provisions of this chapter and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this chapter.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this chapter may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this chapter if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this chapter, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this chapter, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this chapter, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b)(1) of this section.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be exercised or performed by the Secretary or by such persons as he may designate.

Regulations

(f) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

Citizen suits

(g)(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g)(2)(B)(ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a)(1)(B) of this title with respect to the taking of any resident endangered species or threatened species within any State.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

Coordination with other laws

(h) The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this chapter with the administration of the animal quarantine laws (sections 101 to 105, 111 to 135b, and 612 to 614 of Title 21) and section 1306 of Title 19. Nothing in this chapter or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this chapter shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this chapter shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 1527 of Title 19, relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

Pub.L. 93-205, § 11, Dec. 38, 1973, 87 Stat. 897; Pub.L. 94-359, § 4, July 12, 1976, 90 Stat. 913; Pub.L. 95-632, §§ 6, 7, 8, Nov. 10, 1978, 92 Stat. 3761, 3762.

References in Text. The amendments "made by this Act", referred to in subsec. (h), refer to the amendments made by Pub.L. 93-205, which amended sections [illegible] 1, [illegible] 9, [illegible]dd, 715i, 715s, 1362, 1371, 1372 and 1402 of this title and section 136 of Title 7 and repealed sections [illegible] to [illegible]-6 of this title.

The Tariff Act of 1930, referred to in subsec. (h), is classified to section 1202 et seq. of Title 19, Customs Duties.

§ 1541. [ESA §12]

Endangered plants

The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after December 28, 1973, the results of such review including recommendations for new legislation or the amendment of existing legislation.

Pub.L. 93–205, § 12, Dec. 28, 1973, 87 Stat. 9[illegible].

§ 1542. [ESA §15]

Authorization of appropriations

Except as authorized in sections 1535 and 1536 of this title, there are authorized to be appropriated—

(1) not to exceed $23,000,000 for each of fiscal years 1979 and 1980, not to exceed $25,000,000 for fiscal year 1981, and not to exceed $27,000,000 for fiscal year 1982 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this chapter;

(2) not to exceed 2,500,000 for each of fiscal years 1979 and 1980, not to exceed $3,000,000 for fiscal year 1981, and not to exceed $3,500,000 for fiscal year 1982 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this chapter; and

(3) not to exceed $1,500,000 for fiscal year 1980, not to exceed $1,750,000 for fiscal year 1981, and not to exceed $1,850,000 for fiscal year 1982 to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this chapter and the Convention which pertain to the importation or exportation of terrestial plants.

Pub.L. 93-205, § 15, Dec. 18, 1973, 87 Stat. 903; Pub.L. 94-325, June 30, 1976, 90 Stat. 724; Pub.L. 95-632, § 9, Nov. 10, 1978, 92 Stat. 3762; Pub.L. 96-159, § 8, Dec. 28, 1979, 93 Stat. 1230.

§ 1543. [ESA §17]

Construction with Marine Mammal Protection Act of 1972

Except as otherwise provided in this chapter, no provision of this chapter shall take precedence over any more restrictive conflicting provison of the Marine Mammal Protection Act of 1972.

Pub.L. 93-205, § 17, Dec. 28, 1973, 87 Stat. 903.

References in Text. The Marine Mammal Protection Act of 1972, referred to in text, is Pub.L. 92-522, Oct. 21, 1972, [illegible] Stat. [illegible], which is classified to section 1361 et seq. of this title.

PART VIII

SECTION-BY-SECTION INDEX

	Year of enactment and public law numbers							
	1973	1976		1977	1978	1979		1980
	93-205	94-325	94-359	95-212	96-632	96-69	96-159	96-246
Sec. 2.—Findings, purposes, and policy:								
Text of public law	24						1304	
Text of House bill, as introduced	45							
House report, section analysis	148							
House report, changes in existing law	---							
Text of House bill, as reported	100							
House debate	191							
Text of House bill, as passed	180							
Text of Senate bill, as introduced	225							
Senate report, section analysis	305							
Senate report, changes in existing law	---							
Text of Senate bill, as reported	251							
Senate debate	356							
Text of Senate bill, as passed	410							
Text of bill reported from conference	427				-------		1431	
Conference report explanatory statement	448				-------		1439	
Sec. 3.—Definitions:								
Text of public law	25		531		647		1304	
Text of House bill, as introduced	47		---		684		----	
House report, section analysis	149		542		749		----	
House report, changes in existing law	---		548		756		----	
Text of House bill, as reported	101		537		715		----	
House debate	191		553		800		----	
Text of House bill, as passed	181		553		-------		----	
Text of Senate bill, as introduced	227		567		905		1388	
Senate report, section analysis	305		577		-------		1393	
Senate report, changes in existing law	---		577		-------		----	
Text of Senate bill, as reported	253		575		924		1388	
Senate debate	356		581		951		1404	
Text of Senate bill, as passed	411		591		1189, 1190		1429	
Text of bill reported from conference	427		---		1192, 1208		1431 1439	
Conference report explanatory statement	448		---		1218		----	
Sec. 4.—Determination of endangered species:								
Text of public law	26		529		660, 662		1304	
Text of House bill, as introduced	49		532		665, 686		----	
House report, section analysis	150		540		740		----	
House report, changes in existing law	168		548		759		----	
Text of House bill, as reported	104		536		694, 717		----	
House debate	191		553		800		----	
Text of House bill, as passed	181		552		-------		----	
Text of Senate bill, as introduced	229				-------		1389	
Senate report, section analysis	306				-------		1394	
Senate report, changes in existing law	331				-------		----	
Text of Senate bill, as reported	256				-------		1389	
Senate debate	356				951		1404	
Text of Senate bill, as passed	412				1169, 1190		1429	
Text of bill reported from conference	429				1204, 1207		1431	
Conference report explanatory statement	449				1219		1439	
Sec. 5.—Land acquisition:								
Text of public law	29				662		----	
Text of House bill, as introduced	51				691		----	
House report, section analysis	151				750		----	
House report, changes in existing law	168				764		----	
Text of House bill, as reported	108				722		----	
House debate	201				800		----	
Text of House bill, as passed	182				-------		----	
Text of Senate bill, as introduced	231				-------		----	
Senate report, section analysis	307				-------		----	
Senate report, changes in existing law	338				-------		----	
Text of Senate bill, as reported	250				-------		----	
Senate debate	356				-------		----	
Text of Senate bill, as passed	413				-------		----	
Text of bill reported from conference	432				1207		----	
Conference report explanatory statement	450				1219		----	

PART VIII—Continued

SECTION-BY-SECTION INDEX—Continued

	Year of enactment and public law numbers							
	1973	1976		1977	1978	1979		1980
	93-205	94-325	94-359	95-212	96-632	96-69	96-159	96-246
Sec. 6.—Cooperation with States:								
Text of public law	29			604	658			1463
Text of House bill, as introduced	54			605	686			1464
House report, section analysis	152			611	750			1468
House report, changes in existing law	---			615	764			1473
Text of House bill, as reported	109			605	717			1473
House debate	201			617	800			1474
Text of House bill, as passed	183			617	----			1474
Text of Senate bill, as introduced	233			622	----			1474
Senate report, section analysis	307			625	----			----
Senate report, changes in existing law	---			628	----			----
Text of Senate bill, as reported	261			623	----			----
Senate debate	356			629	951			1476
Text of Senate bill, as passed	414			629	1186			1476
Text of bill reported from conference	432			630	1203			
Conference report explanatory statement	450			632	1217			
Sec. 7.—Interagency cooperation:								
Text of public law	32				648	1237	1305	
Text of House bill, as introduced	66				668	----	1311	
House report, section analysis	153				743	----	1325, 1333	
House report, changes in existing law	---				768	----	1314	
Text of House bill, as reported	114				699	----	1348	
House debate	191				800	1238	1382	
Text of House bill, as passed	184				----	1243	----	
Text of Senate bill, as introduced	245				906	1243	1387	
Senate report, section analysis	307				942	----	1393	
Senate report, changes in existing law	---				----	----	----	
Text of Senate bill, as reported	266				925	----	1387	
Senate debate	356				951	1244	1404	
Text of Senate bill, as passed	415				1172	----	1429	
Text of bill reported from conference	435				1193	----	1432	
Conference report explanatory statement	---				1209	1261, 1284	1442	
Sec. 8.—International cooperation:								
Text of public law	32						1307	
Text of House bill, as introduced	66							
House report, section analysis	154							
House report, changes in existing law	---							
Text of House bill, as reported	115							
House debate	191							
Text of House bill, as passed	184							
Text of Senate bill, as introduced	245							
Senate report, section analysis	308							
Senate report, changes in existing law	---							
Text of Senate bill, as reported	267							
Senate debate	356							
Text of Senate bill, as passed	416							
Text of bill reported from conference	435						1435	
Conference report explanatory statement	451						1447	
Sec. 9.—Prohibited acts:								
Text of public law	33				656			
Text of House bill, as introduced	56				691			
House report, section analysis	154				750			
House report, changes in existing law	168				776			
Text of House bill, as reported	118				722			
House debate	191				800			
Text of House bill, as passed	185				----			
Text of Senate bill, as introduced	235				----			
Senate report, section analysis	308				946			
Senate report, changes in existing law	331				----			
Text of Senate bill, as reported	274				937			
Senate debate	356				951			
Text of Senate bill, as passed	417				1184			
Text of bill reported from conference	436				1201			
Conference report explanatory statement	452				1214			
Sec. 10.—Exceptions:								
Text of public law	36		529		656		1309	
Text of House bill, as introduced	58		532		----		----	
House report, section analysis	155		540		751		1325	
House report, changes in existing law	---		548		779		1333	
Text of House bill, as reported	123		536		723		1315	
House debate	191		553		800		1348	
Text of House bill, as reported	187		552		----		1382	
Text of Senate bill, as introduced	237		565, 568		----		----	
Senate report, section analysis	309		577		----		----	
Senate report, changes in existing law	---		577		----		----	
Text of Senate bill, as passed	276		575		----		----	
Senate debate	356		582		----		----	
Text of Senate bill, as passed	418		591		----		----	
Text of bill reported from conference	439				1201		----	
Conference report explanatory statement	452				1215		1448	

Part VIII—Continued

SECTION-BY-SECTION INDEX -Continued

	Year of enactment and public law numbers							
	1973	1976		1977	1978	1979		1980
	93–205	94–325	94–359	95–212	96–632	96–69	96–159	96–246
Sec. 11.—Penalties and enforcement:								
Text of public law	37		531		657			
Text of House bill, as introduced	59		535		689			
House report, section analysis	156		541		750			
House report, changes in existing law	176		550		783			
Text of House bill, as reported	125		537		720			
House debate	191		553		800			
Text of House bill, as passed	187		553		---			
Text of Senate bill, as introduced	238				---			
Senate report, section analysis	309				---			
Senate report, changes in existing law	337				---			
Text of Senate bill, as reported	280				---			
Senate debate	356				951			
Text of Senate bill, as passed	420				1184			
Text of bill reported from conference	441				1202			
Conference report explanatory statement	453				1216			
Sec. 12.—Endangered plants:								
Text of public law	41							
Text of House bill, as introduced	70							
House report, section analysis	158							
House report, changes in existing law	---							
Text of House bill, as reported	134							
House debate	191							
Text of House bill, as passed	190							
Text of Senate bill, as introduced	---							
Senate report, section analysis	310							
Senate report, changes in existing law	---							
Text of Senate bill, as reported	290							
Senate debate	356							
Text of Senate bill, as passed	423							
Text of bill reported from conference	445							
Conference report explanatory statement	453							
Sec. 13.—Conforming amendments:								
Text of public law	42							
Text of House bill, as introduced	70							
House report, section analysis	158							
House report, changes in existing law	168							
Text of House bill, as reported	134							
House debate	191							
Text of House bill, as passed	190							
Text of Senate bill, as introduced	249							
Senate report, section analysis	310							
Senate report, changes in existing law	331							
Text of Senate bill, as reported	290							
Senate debate	356							
Text of Senate bill, as passed	423							
Text of bill reported from conference	445							
Conference report explanatory statement	---							
Sec. 14.—Repealer:								
Text of public law	43							
Text of House bill, as introduced	71							
House report, section analysis	159							
House report, changes in existing law	168							
Text of House bill, as reported	137							
House debate	191							
Text of House bill, as passed	191							
Text of Senate bill, as introduced	250							
Senate report, section analysis	310							
Senate report, changes in existing law	331							
Text of Senate bill, as reported	293							
Senate debate	356							
Text of Senate bill, as passed	424							
Text of bill reported from conference	446							
Conference report explanatory statement	---							
Sec. 15.—Authorization of appropriations:								
Text of public law	43	492			658		1309	
Text of House bill, as introduced	---	493			683		1312	
House report, section analysis	159	496			749		1325	
House report, changes in existing law	---	503			790		1333	
Text of House bill, as reported	138	495			714		1314	
House debate	191	505			800		1348	
Text of House bill, as reported	191	505			----		1382	
Text of Senate bill, as introduced	---	512			916		1388	
Senate report, section analysis	311	520			----		1393	
Senate report, changes in existing law	---	520			----		----	
Text of Senate bill, as reported	297	521			937		1388	
Senate debate	356	523			951		1404	
Text of Senate bill, as passed	425	523			1185		1429	
Text of bill, reported from conference	446	---			1203		1437	
Conference report explanatory statement	453	---			1217		1449	

PART VIII—Continued

SECTION-BY-SECTION INDEX—Continued

	Year of enactment and public law numbers							
	1973	1976		1977	1978	1979		1980
	93–205	94–325	94–359	95–212	96–632	96–69	96–159	96–246
Sec. 16.—Effective date:								
Text of public law	43							
Text of House bill, as introduced	---							
House report, section analysis	159							
House report, changes in existing law	---							
Text of House bill, as reported	138							
House debate	191							
Text of House bill, as passed	191							
Text of Senate bill, as introduced	---							
Senate report, section analysis	---							
Senate report, changes in existing law	---							
Text of Senate bill, as reported	297							
Senate debate	356							
Text of Senate bill, as passed	425							
Text of bill reported from conference	446							
Conference report explanatory statement	---							
Sec. 17.—Marine Mammal Protection Act of 1972:								
Text of public law	44							
Text of House bill, as introduced	---							
House report, section analysis	159							
House report, changes in existing law	168							
Text of House bill, as reported	136							
House debate	197							
Text of House bill, as passed	191							
Text of Senate bill, as introduced	---							
Senate report, section analysis	310							
Senate report, changes in existing law	333							
Text of Senate bill, as reported	297							
Senate debate	356							
Text of Senate bill, as passed	425							
Text of bill reported from conference	446							
Conference report explanatory statement	454							

PART IX

SELECTED REFERENCES ON THE ENDANGERED SPECIES ACT

American Bar Association. Section of Natural Resources Law. Environmental Quality Committee. Annual Review of Significant Activities—1978. Part V. Endangered Species Act. Natural resources lawyer, v. 12, no. 1, 1979 : 101–104.

The Committee's annual report on significant legislative, judicial, and administrative activities concerning the Endangered Species Act for the year 1978.

American Bar Association. Section of Natural Resources Law. Environmental Quality Committee. Annual Review of Significant Activities—1979. Part V. Endangered Species Act. Natural resources lawyer, v. 13, no. 1, 1980 : 121–126.

The Committee's annual report on significant legislative, judicial, and administrative activities concerning the Endangered Species Act for the year 1979.

American Bar Association. Section of Natural Resources Law. Environmental Committee. Annual Review of Significant Activities—1980. Part IV. Endangered Species Act. Natural resources lawyer, v. 14, no. 1, 1981 : 100–102.

The Committee's annual report on significant legislative, judicial, and administrative activities concerning the Endangered Species Act for the year 1980.

Armstrong, James J.: The California sea otter: emerging conflicts in resource management. San Diego law review, v. 16, Mar. 1979 : 249–285. Article examines the history and present status of the California sea otter and analyzes the various forms of protection afforded it by law. Discusses the controversy relating to the expansion of the otter's habitat and the threat the otters pose to commercial and amateur shellfish harvests.

Bean, Michael J.: The Endangered Species Act under fire. National parks and conservation magazine, v. 51, June 1977 : 16–20. Describes the issues involved in current efforts to convince Congress to amend Section 7 of the Endangered Species Act, which "directs all federal agencies to carry out programs for the conservation of endangered and threatened species and also to ensure that actions authorized, funded, or carried out by them not jeopardize the continued existence of such species nor destroy habitat determined to be critical to their survival."

Bodi, F. Lorraine: Protecting Columbia River salmon under the Endangered Species Act. Environmental law, v. 10, winter 1980 : 349–387. Discusses whether the Columbia Basin salmon and steelhead trout populations should be proposed for listing as threatened or endangered species under the Endangered Species Act. Outlines the steps which must be followed in listing a species under the Act.

Campbell, Faith Thompson; Tarr, Jan: The international trade in plants is still unregulated. National parks and conservation magazine, v. 54, Apr. 1980: 11–15. Expresses concern about the lack of control of the international trade in plants and the resulting threat to endangered species.

Coggins, George Cameron: Federal wildlife law achieves adolescence: developments in the 1970s. Duke law journal, v. 1978, Aug. 1978: 753–817. Describes the origin and development of Federal wildlife law through descriptions of major Federal wildlife statutes and judicial developments connected with the legislation.

Coggins, George Cameron: Legal protection for marine mammals: an overview of innovative resource conservation legislation. Environmental law, v. 6, fall 1975: 1–59. Article explores the biological, legal, and popular contexts from which the Endangered Species Act and the Marine Mammal Protection Act arose. Also describes "some characteristics of marine mammals and the conditions affecting their viability or survival as species, outline[s] the consequent piece-meal national and international attempts to preserve those species as an economic resource, and recount[s] the legislative and popular backgrounds of the MMPA."

Coggins, George Cameron; Hensley, William H.: Constitutional limits on Federal power to protect and manage wildlife: is the Endangered Species Act endangered? Iowa law review, v. 61, June 1976: 1099–1152. Article concerns the implications of the New Mexico Federal district court decision in *New Mexico* v. *Morton* that the Wild and Free-Roaming Burros Act is unconstitutional. The authors sketch the history of Federal wildlife legislation, discuss the constitutional powers for Federal protection of wildlife, and comment on the predicted effects of a Supreme Court affirmation or reversal of the New Mexico decision.

Cook, Sara Grigsby; Cook, Chuck; Gove, Doris: The snail darter and the dam. National parks & conservation magazine, v. 51, May 1977: 10–13. The authors state that "TVA publicity about a tiny fish halting a pork-barrel dam project has misled the public and has obscured compelling economic arguments for alternatives."

The Endangered species law is under scrutiny. Conservation Foundation letter, Apr. 1978: 1–8. "The strange case of the snail darter has brought a reexamination of the federal endangered species protection program and the strong statute on which it is based. The outcome—which now hangs on decisions of the Supreme Court, Congress, and the Administration—is much in doubt."

Federal preemption: a new method for invalidating state laws designed to protect endangered species: *Fouke Co.* v. *Mandel.* University of Colorado law review, v. 47, winter 1976: 261–278. Case note analyzes *Fouke Co.* v. *Mandel*, a case illustrative of the new way parties are seeking to invalidate state protective legislation. "The *Fouke* opinion demonstrates an erroneous application of the doctrine of federal preemption. The error results from the court's willingness to assume preemptive capability. In view of the increasing number of federal intent, and more importantly, from the court's misunderstanding of federal conservatory statutes, state legislatures desiring to enact or preserve statutes designed to protect endangered species should have a thorough understanding of the doctrine of federal preemption."

Freudenthal, David D.: Environmental law—snail darters—a threat to private use of the public domain? *Tennessee Valley Authority* v. *Hill*, 98 Sup. Ct. 2299 (1978). Land and water law review, v. 14, no. 1, 1979: 105–117. Note contends that the Supreme Court decision in the Tellico Dam case will strongly affect resource allocation decisions in states with large amounts of public land. Reviews the actions in the case, in which the Court decided to strictly construe the provision of the Endangered Species Act.

Ganong, Nancy M.: Endangered Species Act amendments of 1978: a congressional response to *Tennessee Valley Authority* v. *Hill*. Columbia journal of environmental law, v. 5, spring 1979: 283–315. Comment concludes that in passing the 1978 amendments, Congress has largely reaffirmed its stance on the value and importance of protecting threatened species. Although difficulties remain with its implementation, the act clearly indicates that the Endangered Species Committee will do the final weighing if irresolvable conflicts arise.

Georgeff, Gary M.: *Tennessee Valley Authority* v. *Hill*. Environmental law, v. 9, no. 3, 1979: 662–670. Provides an overview of the Supreme Court's action in *Tennessee Valley Authority* v. *Hill*, in which the Court forbade the completion of the Tellico Dam because it would destroy the habitat of a small fish called the snail darter.

Guidry, William B.: The revolutionary politics of no growth. American opinion, v. 22, May 1979: 11–15, 17, 19–20, 79, 81, 83, 85–86. Condemns the Endangered Species Act and the environmental movement for curbing economic growth and restricting the use of private property.

Harrington, Winston: The Endangered Species Act and the search for balance. Natural resources journal, v. 21, no. 1, 1981: 70–92. An article which seeks to examine Congress' search for balance between national desires to protect endangered species and their habitats and national interests in economic activities. In particular the author examines the extent to which the implementation of the 1973 act posed an actual versus a potential threat to economic development, the nature of the economic objectives sacrificed, and how the 1978 amendments affect endangered species protection and economic development.

Humans attach many values to wildlife species. Conservation Foundation letter, May 1978: whole issue. "Many pragmatic reasons have been proffered for protecting endangered and other species of wildlife. They include those based on ecological necessity, scientific advancement, economic benefit, and human enrichment. In addition, ethical considerations loom large as mankind searches for a modus vivendia with the other creatures of the earth."

Lachenmeier, Rudy R.: The Endangered Species Act of 1973: preservation or pandemonium? Environmental law, v. 5, fall 1974: 29–83. Article demonstrates how the Endangered Species Act of 1973 affects Federal land use policies, industry, and recreation. Analyzes legislative history of the act; discusses what the act says and what it may mean to various concerns; and recommends possible changes.

Leepson, Marc: Protecting endangered wildlife. [Washington] Editorial Research Reports, 1977. 683–700 p. (Editorial research reports, 1977 v. 2, no. 10). Concerns endangered wildlife in the U.S. and the various laws which have been passed to protect threatened species from extincition. Brief mention is made of the international wildlife conservation effort.

Lera, Thomas. M., Fortune, Sue: But management in the United States: a survey of legislative actions, court decisions and agency interpretations. [Chicago, U.S. Environmental Protection Agency. Region V] 1978, 49 p. "EPA-905/3-78-001." "This paper is the result of a survey conducted throughout fourteen federal departments and agencies in order to obtain their interpretation of the 1973 [Endangered Species] Act, and more specifically, how bats are protected by this interpretation."

Lipske, Michael: The withering wreath. Defenders, v. 53, Dec. 1978: 298–304. Describes the problems of preserving endangered plant species including plant theft, weak legislation and legal problems. Focuses on preserving carnivorous plants in North Carolina.

Mallory, Richard: Obligations of Federal agencies under section 7 of the Endangered Species Act of 1973. Stanford law review, v. 28, July 1976: 1247–1270. Comment examines the implications of section 7 of the Endangered Species Act "for Federal agency actions affecting domestic protected species. Part I surveys the act briefly. Part II shows that section 7 absolutely bars agency actions which would violate its provisions. . . . Part III sets out the procedural requirements implied by section 7 necessary to effectuate its substantive policy." The author also discusses the role of the Fish and Wildlife Service in administering the act.

Michie, Preston: Alaskan natives: Eskimos and Bowhead whales: an inquiry into cultural and environmental values that clash in courts of law. American Indian law review, v. 7, summer 1979: 79–114. Comment reviews the importance of the Bowhead whale in Eskimo culture and the Federal Government's interest in protecting this endangered animal through international whaling regulation and domestic environmental legislation. "The key to preserving the Eskimo culture is maintaining a healthy, viable Bowhead population."

Miller, Jon R.; Menz, Frederic C.: Some economic considerations for wildlife preservation. Southern economic journal, v. 45, Jan. 1979: 718–729. The authors develop a welfare model for the preservation of a given species. Using the model, they analyze the Endangered Species Act, and find that it receives a questionable rating. They contend that the act treats all species the same and does not allow for different preferences for wildlife, for substitution possibilities or for differing relative costs of conservation.

Preston, Dickson J.: Endangered plants. American forests, v. 81, Apr. 1975: 8–11, 46–47. A recent report of the Smithsonian Institution to Congress is the first attempt to assess the status of plant life on a national scale and to suggest methods of conserving it. Heart of the report is a list of 2,099 species and varieties of plants which are classified as endangered, threatened or recently extinct.

Rogers, James P.: Are our natural resources on the endangered species list? Natural resources lawyer, v. 11, no. 2, 1978: 267–276. Discusses three aspects of the Endangered Species Act which the author finds peculiar and which he feels are contrary to natural resource development policy. "First, the protection inherent in a listing of 'endangered' or 'threatened' species is not limited to those whose rarity is man-caused. Secondly, the administration of their functions by all other agencies of the federal government is made subordinate to the functions of the Department of the Interior in the administration of this Act. Third, while the Act does not on its face affect private lands, its reach includes the broadest possible activities of the federal government."

Rosenberg, Ronald H.: Federal protection of unique environmental interests; endangered and threatened species. North Carolina law review, v. 58, Mar. 1980: 491–559. Article "surveys the federal government's role in species protection, with a special focus on the Endangered Species Act of 1973. Prompted by the much-publicized Supreme Court decision in the 'snail darter case'—TVA v. Hill—Congress extensively amended the Act in 1978. After a detailed analysis of these amendments, Professor Rosenberg concludes that, though Congress made some significant changes in the federal system of species protection, the strong pro-species policy embodied in the 1973 Act remains intact."

Shea, Kevin: The Endangered Species Act. Environment, v. 19, Oct. 1977: 7–15. Describes the provisions of the Endangered Species Act and its effect on federally funded public works projects and state law.

Sheppard, Judy Lynn: The evolution of endangered species management and the utility of the concept of critical habitat: a case study in the administration of wildlife policy. (A thesis submitted in a partial fulfillment of the requirements for the degree of Master of Science in Natural Resources). School of Natural Resources, The University of Michigan, Ann Arbor, Michigan. April 1980. 105 p. Chronicles the evolution of endangered species legislation and the inclusion of the critical habitat concept in regulation and law. Evaluates the applicability of the concept to "field" situations and discuss difficulties in policy implementation of translating legislative intent and statutory objectives to agency regulations and ecological implementation "on the ground". A seminal work worthy of this unique member of her species.

Shoemaker, Thomas G.: The new Endangered Species Act. Environmental science and technology, v. 13, Sept. 1979: 1058–1061. Outlines the provisions of the Endangered Species Act Amendments of 1978. Provides a flow chart outlining the process of exempting a project from the act's provisions as provided for in section seven.

Starnes, Richard: The sham of endangered species. (Starnes at Large column). Outdoor life, August 1980: 12–14, 16. Argues that the Endangered Species Act, rather than being an idealistic document creating a new ethic in man's relationship with the natural world, in fact "has worked very badly, has been abused and diverted from its purpose by bureaucrats of a high order of arrogance, and is likely to get no better."

Steinhart, Peter: Mighty, like a Furbish lousewort. Audubon, v. 79, May 1977: 121–125. Describes the use of Section 7 of the Endangered Species Act to halt public works which encroach on the critical habitat of endangered species. Notes attempts to amend the act and divest Section 7 of its authority.

Stromberg, Ann: Endangered Species Act amendments. Natural resources journal, v. 19, Oct. 1979: 933–941. Article describes the 1978 amendments to the Endangered Species Act. The new amendments require "a two-step exemption process for Federal agency actions, more public notice of listing processes, and agency consideration of the economic impacts of listing."

Stromberg, David B.: The Endangered Species Act amendments of 1978: a step backwards? Boston College environmental affairs law review. v. 7, no. 1, 1978: 33–42. Article examines the 1978 revisions to the Endangered Species Act and analyzes them discussing the potential ramifications on endangered and threatened species.

Stromberg, David B.: The Endangered Species Act of 1973: is the statute itself endangered? Environmental affairs, v. 6, no. 4, 1978: 511–533. Explores the nature and framework of the Endangered Species Act and identifies the act's strengths and weaknesses. Discusses the court's interpretation of the Act focusing on TVA v. Hill. Assesses the Act's relationship to proposed public works projects and suggests statutory revisions which may prevent future conflicts.

Swift, Byron: Endangered Species Act: constitutional tensions and regulatory discord. Columbia journal of environmental law, v. 4, fall 1977: 97–142. Note discusses the constitutionality of the Endangered Species Act in light of recent legal decisions condemning laws which severely intrude into state government functioning. Potential Federal interagency conflicts arising from the administration of the act are described.

Tennessee Valley Authority. Division of Forestry. Fisheries and Wildlife Development. Which species will be endangered? Industrial development. v. 146, Sept.–Oct. 1977: 14–18. The Tennessee Valley Authority gives its viewpoint on the Tellico Dam Project which was halted because it disrupted the "critical habitat" of the snail darter (a small fish). The TVA contends that legal interpretations of the Endangered Species Act are "halting development and disrupting the economic health of the nation."

U.S. Congress. Conference Committees, 1973. Endangered Species Act of 1973; conference report to accompany S. 1983. [Washington, U.S. Govt. Print. Off.] 1973. 29 p. (93d Cong., 1st sess. House. Report no. 93–740.)

U.S. Congress. Conference Committees, 1978. Endangered Species Act amendments of 1978: conference report to accompany S. 2899. [Washington, U.S. Govt. Print. Off.] 1978. 28 p. (95th Cong., 2d sess. House. Report no. 95–1804.)

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